

ATTACHMENT 24

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March 18, 2014

406

IN THE DISTRICT COURT OF WAYNDOTTE COUNTY,

KANSAS

TWENTY-NINTH JUDICIAL DISTRICT

ASSOCIATED WHOLESALE GROCERS,

INC., et al.,

Plaintiffs,

Case No.

V.

10CV2171

UNITED EGG PRODUCERS, et al.,

HIGHLY

Defendants.

CONFIDENTIAL

Volume II

Washington, D.C.

March 18, 2014

The deposition of GREGORY EUGENE

HINTON was convened on Tuesday, March 18, 2014,

Commencing at 8:02 a.m., at the offices of

Porter Wright, 1900 K Street, Northwest

Washington, D.C., before Paula G. Satkin,

Registered Professional Reporter and Notary

Public.

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<p style="text-align: right;">407</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Plaintiffs:</p> <p>4 PATRICK J. STUEVE, ESQ.</p> <p>5 DAVID A. HICKEY, ESQ.</p> <p>6 Stueve Siegel Hanson LLP</p> <p>7 460 Nichols Road, Suite 200</p> <p>8 Kansas City, Missouri 64112</p> <p>9 (816) 714-7100</p> <p>10</p> <p>11 On behalf of Rose Acre Farms:</p> <p>12 JOHN C. MONICA, JR., ESQ.</p> <p>13 MOLLY CRABTREE, ESQ.</p> <p>14 Porter, Wright, Morris & Arthur LLP</p> <p>15 1900 K Street, NW</p> <p>16 Suite 1110</p> <p>17 Washington, DC 20006</p> <p>18 (202) 778-3000</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">409</p> <p>1 A P P E A R A N C E S (Cont'd)</p> <p>2</p> <p>3 On behalf of Midwest Poultry:</p> <p>4 RYAN HURLEY, ESQ.</p> <p>5 JASON BURKE, ESQ.</p> <p>6 Faegre Baker Daniels</p> <p>7 300 N. Meridian Street</p> <p>8 Suite 2700</p> <p>9 Indianapolis, IN 46204-1750</p> <p>10 (317) 237-0300</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">408</p> <p>1 A P P E A R A N C E S (Cont'd)</p> <p>2</p> <p>3 On behalf of United Egg Producers and US</p> <p>4 Egg Marketers:</p> <p>5 WHITNEY REDDING, ESQ.</p> <p>6 Pepper Hamilton LLP</p> <p>7 3000 Two Logan Square</p> <p>8 Eighteenth and Arch Streets</p> <p>9 Philadelphia, Pennsylvania 19103-2799</p> <p>10 (215) 981-4000</p> <p>11</p> <p>12 On behalf of the Sparboe:</p> <p>13 MATTHEW HARTUNG, ESQ.</p> <p>14 Hutchison, P.A.</p> <p>15 1907 East Wayzata Blvd</p> <p>16 Suite 330</p> <p>17 Wayzata, Minnesota 55391</p> <p>18 (952) 215-0141</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">410</p> <p>1 ALSO PRESENT:</p> <p>2 JOSEPH A. MILLER</p> <p>3 General Counsel, Rose Acre Farms, Inc.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p style="text-align: right;">411</p> <p>1 EXAMINATION</p> <p>2 By Mr. Stueve 414</p> <p>3 By Mr. Monica 717</p> <p>4 By Mr. Stueve 722</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 Exhibit No. Page No.</p> <p>9 Exhibit 573 Document Bates stamped 451</p> <p>10 RAFKS 0010568</p> <p>11 Exhibit 574 Document Bates stamped 455</p> <p>12 RAFKS 0000603</p> <p>13 Exhibit 575 Document Bates stamped 578</p> <p>14 RA 0071932 to 33</p> <p>15 Exhibit 576 Super Value website printout 601</p> <p>16 Exhibit 577 Topco website printout 601</p> <p>17 Exhibit 578 Centrella website printout 602</p> <p>18 Exhibit 579 August 2010 membership agreement 614</p> <p>19 Entered into between Rose Acre</p> <p>20 And USEM</p> <p>21 Exhibit 580 Document Bates stamped 625</p> <p>22 RAUPDATE 0067579 through 93</p>	<p style="text-align: right;">413</p> <p>1 EXHIBITS</p> <p>2 Exhibit No. Page No.</p> <p>3 Exhibit 592 Document Bates stamped 690</p> <p>4 UE 1028004 through 15</p> <p>5 Exhibit 593 Document Bates stamped 703</p> <p>6 RAUPDATE 0013665 through 66</p> <p>7 Exhibit 594 Document Bates stamped 706</p> <p>8 RAFKS 0013293</p> <p>9 Exhibit 595 Document Bates stamped 708</p> <p>10 RAUPDATE 0040047</p> <p>11 Exhibit 596 Document Bates stamped 713</p> <p>12 RAUPDATE 0071391 through 30</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">412</p> <p>1 EXHIBITS</p> <p>2 Exhibit No. Page No.</p> <p>3 Exhibit 581 Document Bates stamped RA 1359 645</p> <p>4 Through RA 1368</p> <p>5 Exhibit 582 Document Bates stamped UE 0317733 664</p> <p>6 Exhibit 583 Document Bates stamped 662</p> <p>7 RA 0002299 through 06</p> <p>8 Exhibit 584 Urner Barry egg quote for 669</p> <p>9 Thursday, August 9, 2007</p> <p>10 Exhibit 585 Urner Barry egg quote 675</p> <p>11 Exhibit 586 Document Bates stamped 678</p> <p>12 UE 0095810 through 5811</p> <p>13 Exhibit 587 Document Bates stamped 681</p> <p>14 RA 0042370</p> <p>15 Exhibit 588 Document Bates stamped 684</p> <p>16 UE 0457968 through 71</p> <p>17 Exhibit 589 Document Bates stamped 685</p> <p>18 UE 0316921 to 22</p> <p>19 Exhibit 590 Document Bates stamped 686</p> <p>20 UE 0526344 through 46</p> <p>21 Exhibit 591 Document Bates stamped 688</p> <p>22 RAFKS 0011622</p>	<p style="text-align: right;">414</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: The time is</p> <p>3 8:02 a.m. on March 18, 2014. This begins media</p> <p>4 unit number one, volume II, of the continued</p> <p>5 deposition of Mr. Greg Hinton.</p> <p>6 EXAMINATION BY COUNSEL FOR PLAINTIFF</p> <p>7 BY MR. STUEVE:</p> <p>8 Q. Mr. Hinton, you understand you are</p> <p>9 still under oath?</p> <p>10 A. Yes.</p> <p>11 Q. All right. If you could, turn</p> <p>12 back to topic number 7. You'll see that there's</p> <p>13 how you determine the price of the eggs and egg</p> <p>14 products, you market and sell to any grocery</p> <p>15 cooperative or grocery wholesaler. Do you see</p> <p>16 that?</p> <p>17 A. Yes.</p> <p>18 Q. We spent quite a bit of time</p> <p>19 yesterday talking about how Rose Acre prices</p> <p>20 both its commodity eggs and its specialty eggs;</p> <p>21 correct?</p> <p>22 A. We talked a lot about specialty</p>

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<p style="text-align: right;">415</p> <p>1 eggs, not much about commodity eggs.</p> <p>2 Q. I asked you about your commodity</p> <p>3 eggs and you testified repeatedly what you would</p> <p>4 do is you would negotiate based off of an Urner</p> <p>5 Barry?</p> <p>6 A. Urner Barry, correct.</p> <p>7 Q. And cents back on Urner Barry; is</p> <p>8 that correct?</p> <p>9 MR. BARNES: Let him finish.</p> <p>10 You're talking over each other. But you can go</p> <p>11 ahead.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Is that correct, sir?</p> <p>14 A. We talked -- yes. That's one of</p> <p>15 the pricing mechanisms is the price off the</p> <p>16 Urner Barry market.</p> <p>17 Q. So let's walk through your largest</p> <p>18 customers, your top ten customers we talked</p> <p>19 about yesterday?</p> <p>20 A. Okay.</p> <p>21 Q. With respect to Save-A-Lot, I'm</p> <p>22 focusing on the commodity eggs, are those</p>	<p style="text-align: right;">417</p> <p>1 Q. Cal-Maine?</p> <p>2 A. Market. Urner Barry market.</p> <p>3 Q. AWG?</p> <p>4 A. Urner Barry market.</p> <p>5 Q. Now, focusing on that 2000 to 2012</p> <p>6 timeframe, what percentage of your commodity</p> <p>7 eggs were based off of -- priced off of Urner</p> <p>8 Barry?</p> <p>9 A. It changed over the years because</p> <p>10 we used the Rose Acre market we discussed</p> <p>11 before, also. So I think yesterday I talked</p> <p>12 about that in 2000 -- early in 2000s, we had as</p> <p>13 many of 50 percent of our eggs priced off the</p> <p>14 Rose Acre market, combination of Rose Acre and</p> <p>15 Urner Barry. And so during the time from 2000</p> <p>16 to 2012, it was always a combination of either</p> <p>17 the Rose Acre or the Urner Barry and it just</p> <p>18 kept increasing more and more Urner Barry and</p> <p>19 less Rose Acre during that time.</p> <p>20 Q. By 2003 would it have been</p> <p>21 majority Urner Barry?</p> <p>22 A. I don't remember what year -- I</p>
<p style="text-align: right;">416</p> <p>1 commodity eggs priced off the Urner Barry</p> <p>2 markets?</p> <p>3 A. Yes, they are.</p> <p>4 Q. And Aldie?</p> <p>5 A. Yes, they are.</p> <p>6 Q. And Kroger?</p> <p>7 A. Yes. They are.</p> <p>8 Q. And Topco?</p> <p>9 A. Yes. They are.</p> <p>10 Q. Wal-Mart?</p> <p>11 A. No. They're not.</p> <p>12 Q. What is Wal-Mart's commodity eggs</p> <p>13 priced off of?</p> <p>14 A. They're a cost plus formula.</p> <p>15 Q. How long has that been the case?</p> <p>16 A. Since 2012.</p> <p>17 Q. Okay. And from prior to that</p> <p>18 time, what was the pricing based off of?</p> <p>19 A. Urner Barry market formula.</p> <p>20 Q. Would that be true from '99</p> <p>21 through 2012?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">418</p> <p>1 don't remember exactly what year everything</p> <p>2 transitioned.</p> <p>3 Q. What documents would you look to</p> <p>4 to refresh your recollection?</p> <p>5 A. The pricing documents.</p> <p>6 Q. And when you were referring to</p> <p>7 pricing documents, what do you mean?</p> <p>8 A. It would be pricing letters that</p> <p>9 would be in my files.</p> <p>10 Q. Okay. Was there any summary</p> <p>11 document that you kept that distinguished bids</p> <p>12 from Urner Barry versus Rose Acre?</p> <p>13 A. Yes. Our sales -- there's sales</p> <p>14 records that show -- it's like a summary of what</p> <p>15 loads per week the customers bought and it</p> <p>16 distinguished who was buying off Rose Acre and</p> <p>17 who was buying off Urner Barry.</p> <p>18 Q. Okay. And what document was that?</p> <p>19 A. I don't believe it would have been</p> <p>20 a title on the document. It's just a -- just a</p> <p>21 customer sales report. It had the last</p> <p>22 ten weeks that everyone -- the eggs that the</p>

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<p style="text-align: right;">419</p> <p>1 customers purchased, average loads which they</p> <p>2 purchased and which market they bought off of.</p> <p>3 Q. How would the markets be</p> <p>4 delineated in this sales report?</p> <p>5 A. The top -- it's -- it just said</p> <p>6 Rose Acre market listed customers and it said</p> <p>7 Urner Barry market listed customers. So there</p> <p>8 was no --</p> <p>9 Q. And those were kept --</p> <p>10 A. In my office in the sales office</p> <p>11 at Rose Acre.</p> <p>12 Q. Did you provide those to counsel?</p> <p>13 A. They scanned my documents, so --</p> <p>14 MR. MONICA: They've been</p> <p>15 produced.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. Who maintained those records?</p> <p>18 A. I maintain them in my office.</p> <p>19 Brenda Tormoehlen, she compiled them and gave me</p> <p>20 the records.</p> <p>21 Q. Is she still at Rose Acre?</p> <p>22 A. No.</p>	<p style="text-align: right;">421</p> <p>1 Yes.</p> <p>2 Q. And then are there any summary</p> <p>3 documents that tracked your Rose Acre market</p> <p>4 price?</p> <p>5 A. Yes.</p> <p>6 Q. And what was that document?</p> <p>7 A. There's -- there was the document</p> <p>8 that I discussed yesterday where we would</p> <p>9 provide the customers the history -- show them</p> <p>10 the Rose Acre market all the different regional</p> <p>11 markets and show them the average.</p> <p>12 Q. Was that maintained internally so</p> <p>13 you could use that for any of your customers?</p> <p>14 A. Yes.</p> <p>15 Q. Do you remember the title of that</p> <p>16 document?</p> <p>17 A. Just -- it was not necessarily a</p> <p>18 title.</p> <p>19 Q. Okay. But would you generate that</p> <p>20 on a monthly basis? How frequently would that</p> <p>21 be generated?</p> <p>22 A. It was -- it was Aaron Heironimus</p>
<p style="text-align: right;">420</p> <p>1 Q. When did she leave?</p> <p>2 A. This month.</p> <p>3 Q. Okay. Did she retire?</p> <p>4 A. She took another position.</p> <p>5 Q. Where at?</p> <p>6 A. Stepwish Trucking.</p> <p>7 Q. Where at?</p> <p>8 A. In Brownstown, Indiana. I think</p> <p>9 it's Brownstown. I think it's Brownstown, maybe</p> <p>10 Bologna, but it's a small town.</p> <p>11 Q. Where does she live?</p> <p>12 A. She built a new house, somewhere</p> <p>13 either Brownstown or Bologna in that area.</p> <p>14 Q. How do you spell her last name?</p> <p>15 MR. BARNES: I think he already</p> <p>16 spelled it.</p> <p>17 THE WITNESS: T-O-R-M-O-E-H-L-E-N.</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. Do you believe by 2007, let's move</p> <p>20 several more years, by 2007 was it substantially</p> <p>21 all Urner Barry by that timeframe?</p> <p>22 A. The majority would be Urner Barry.</p>	<p style="text-align: right;">422</p> <p>1 puts it together. He would track it, you know,</p> <p>2 update it -- it could be updated weekly, but he</p> <p>3 didn't necessarily do it every week. We more</p> <p>4 used it for the annual, so it was more important</p> <p>5 for an annual market.</p> <p>6 Q. When you say annual, what do you</p> <p>7 mean by that?</p> <p>8 A. At the end of the year, so we saw</p> <p>9 the averages.</p> <p>10 Q. You would generate kind of a year</p> <p>11 end report?</p> <p>12 A. Yes.</p> <p>13 Q. What would that be called?</p> <p>14 A. There really was no title on it.</p> <p>15 Q. Did you keep those?</p> <p>16 A. Yes.</p> <p>17 Q. Would those have been provided to</p> <p>18 your counsel?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Now, of the top customers,</p> <p>21 you identified Kraft. Was that one of your</p> <p>22 customers that would purchase your egg products?</p>

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<p style="text-align: right;">423</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Which egg products would</p> <p>3 Kraft purchase?</p> <p>4 A. They would purchase salt yolk and</p> <p>5 salted whole mix, Feme.</p> <p>6 Q. How do you spell that?</p> <p>7 A. F-E-M-E.</p> <p>8 Q. What is that?</p> <p>9 A. Am I allowed to discuss?</p> <p>10 MR. MILLER: It's all</p> <p>11 confidential.</p> <p>12 THE WITNESS: It's a proprietary</p> <p>13 product.</p> <p>14 MR. BARNES: Sorry.</p> <p>15 MR. MILLER: We have to mark this</p> <p>16 highly confidential.</p> <p>17 THE WITNESS: We have confidential</p> <p>18 agreements with Kraft. Is it okay?</p> <p>19 MS. CRABTREE: Yeah. I've got it.</p> <p>20 THE WITNESS: It's an enzyme</p> <p>21 modified product to enhance the flavor of egg.</p> <p>22 BY MR. STUEVE:</p>	<p style="text-align: right;">425</p> <p>1 A. Salad dressings.</p> <p>2 Q. Any other egg products you sell to</p> <p>3 Kraft?</p> <p>4 A. Not that I can think of right now.</p> <p>5 No.</p> <p>6 Q. Okay. And how do you -- let's</p> <p>7 take the frozen salt yolk. How do you price</p> <p>8 that to Kraft?</p> <p>9 A. Off the Urner Barry frozen salt</p> <p>10 yolk market.</p> <p>11 Q. What about the dried egg whites?</p> <p>12 A. Off the Urner Barry dried egg</p> <p>13 white market.</p> <p>14 Q. What about the salted whole mix?</p> <p>15 A. It's priced off the Urner Barry</p> <p>16 liquid whole egg and yolk market.</p> <p>17 Q. What about the salt yolk?</p> <p>18 A. It's priced off the Urner Barry</p> <p>19 yolk market.</p> <p>20 Q. Now, you listed -- some of these</p> <p>21 products you didn't list yesterday, correct,</p> <p>22 like FEME?</p>
<p style="text-align: right;">424</p> <p>1 Q. Okay.</p> <p>2 A. Dried egg whites.</p> <p>3 Q. Okay.</p> <p>4 A. Frozen salt yolk and NEF, N-E-F.</p> <p>5 Q. What is that?</p> <p>6 A. It's another highly confidential</p> <p>7 product, it's an enzyme modified yolk.</p> <p>8 Q. What does Kraft use NEF for?</p> <p>9 A. In the process of making salad</p> <p>10 dressings.</p> <p>11 Q. Okay. What does it use the frozen</p> <p>12 salt yolk for?</p> <p>13 A. I don't know for sure.</p> <p>14 Q. What about the dried egg whites?</p> <p>15 A. Marshmallow fluff.</p> <p>16 Q. What about the FEME?</p> <p>17 A. Making the salad dressings.</p> <p>18 Q. Salted, is it white mix?</p> <p>19 A. Whole mix.</p> <p>20 Q. Whole mix?</p> <p>21 A. Salad dressings.</p> <p>22 Q. What about the salt yolk?</p>	<p style="text-align: right;">426</p> <p>1 A. Correct.</p> <p>2 Q. I want to make sure you're giving</p> <p>3 me your best recollection at the time. I want</p> <p>4 to make sure. Are there any other egg products</p> <p>5 we didn't talk about yesterday that we've now</p> <p>6 identified this morning? Are there any other,</p> <p>7 whether they're proprietary or not?</p> <p>8 A. We would need to go back to the</p> <p>9 list we went through yesterday. I'm not --</p> <p>10 MR. MONICA: We're talking about</p> <p>11 that Rose Acre sold from 2000 to present?</p> <p>12 MR. STUEVE: Yes.</p> <p>13 MR. MONICA: Okay.</p> <p>14 THE WITNESS: Because I mean, we</p> <p>15 talked about -- if I recall right, we talked</p> <p>16 about in general terms, we did dried egg whites.</p> <p>17 Those products would have fell into that</p> <p>18 category we didn't go into subcategories on some</p> <p>19 of them. Like dried yolk, we have a free flow</p> <p>20 dried yolk and standard dried yolk. I didn't go</p> <p>21 into subcategories.</p> <p>22 BY MR. STUEVE:</p>

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<p style="text-align: right;">427</p> <p>1 Q. Let me ask you this. With respect</p> <p>2 to your egg products that you sell to your</p> <p>3 customers, is the pricing based off of Urner</p> <p>4 Barry?</p> <p>5 A. Not all egg products.</p> <p>6 Q. Roughly what percentage of your</p> <p>7 egg product sales are based off the</p> <p>8 corresponding Urner Barry markets?</p> <p>9 A. Probably 95 percent.</p> <p>10 Q. And then let's focus on the</p> <p>11 5 percent. What types of products are we</p> <p>12 talking about that are not based off of Urner</p> <p>13 Barry markets?</p> <p>14 A. Retail liquid.</p> <p>15 Q. Okay. What else?</p> <p>16 A. I have some whole egg bag in a box</p> <p>17 for Cracker Barrel.</p> <p>18 Q. Any others?</p> <p>19 A. Dried -- a lot of dried egg -- the</p> <p>20 dried eggs. So, actually -- that 95 percent is</p> <p>21 probably more like 80 percent. Because the</p> <p>22 majority of dried products are sold off of fixed</p>	<p style="text-align: right;">429</p> <p>1 Q. What size packages?</p> <p>2 A. 1-pound and 2-pound.</p> <p>3 Q. And then you sell them in 1-pound,</p> <p>4 2-pound and then they package themselves?</p> <p>5 A. No. We pack it in gable top,</p> <p>6 quart and pint, gable top carton, packed in a</p> <p>7 case and ship it to their warehouse.</p> <p>8 Q. So you do all the packaging?</p> <p>9 A. Yes.</p> <p>10 Q. Do you price the retail liquid the</p> <p>11 same way for all these customers?</p> <p>12 A. We use a similar process goes into</p> <p>13 the pricing those. Yes.</p> <p>14 Q. What is that process?</p> <p>15 A. We establish a white price that we</p> <p>16 want to receive and add the ingredients and</p> <p>17 packaging cost and freight, if necessary, and</p> <p>18 then that's how we establish a price.</p> <p>19 Q. Do you add in your profit then?</p> <p>20 A. There's not a set profit on the</p> <p>21 product because the egg white market fluctuates</p> <p>22 often and it's highly influenced by the yolk</p>
<p style="text-align: right;">428</p> <p>1 price.</p> <p>2 Q. Retail liquid, who do you sell</p> <p>3 those to?</p> <p>4 A. Grocery stores.</p> <p>5 Q. Okay. And did you have a</p> <p>6 particular set of clients, grocery stores that</p> <p>7 buy a large portion of that?</p> <p>8 A. Yes. We do.</p> <p>9 Q. Who is that?</p> <p>10 A. Aldie, Save-A-Lot, CCF Brands for</p> <p>11 Sam's, Meyer, Big Y, Hy-Vee, Giant Eagle, Dutch</p> <p>12 Farms, Eggland's Best. There's others. Off the</p> <p>13 top of my head, I can't put a name on them.</p> <p>14 Q. On the retail liquid, is this the</p> <p>15 packaging you can get in certain ounce size like</p> <p>16 Eggland's Best, where they may low cholesterol,</p> <p>17 those types of --</p> <p>18 A. We produce two products.</p> <p>19 Q. Okay. What are those?</p> <p>20 A. Some that's all whites and the</p> <p>21 others the no cholesterol, similar to an Egg</p> <p>22 Beaters type product.</p>	<p style="text-align: right;">430</p> <p>1 prices.</p> <p>2 Q. When you talk about that, are you</p> <p>3 talking about the Urner Barry yolk market?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And so whether or not you</p> <p>6 make a profit again is going to be impacted by</p> <p>7 the Urner Barry market?</p> <p>8 A. Yes. That would definitely -- the</p> <p>9 Urner Barry market would have an impact on us,</p> <p>10 yes.</p> <p>11 Q. That process you just described,</p> <p>12 do you use that same process for all the</p> <p>13 customers that you identified with respect to</p> <p>14 the retail liquid?</p> <p>15 A. Yes. That's the thought process</p> <p>16 that goes into that.</p> <p>17 Q. Okay. With respect to the little</p> <p>18 egg bag in a box?</p> <p>19 A. Yes.</p> <p>20 Q. Is that also a similar pricing</p> <p>21 method that you just described?</p> <p>22 A. Yes. For the Cracker Barrel, it's</p>

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<p style="text-align: right;">431</p> <p>1 a similar process.</p> <p>2 Q. I'm sorry. Go ahead.</p> <p>3 A. On the fixed price Cracker Barrel.</p> <p>4 It would be a similar process. Yes.</p> <p>5 Q. What market impacts your</p> <p>6 profitability there?</p> <p>7 A. On that product, the market is not</p> <p>8 going to impact it. Our cost to produce will</p> <p>9 impact it.</p> <p>10 Q. Do you have a cost plus then</p> <p>11 pricing for that?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 A. It's just a fixed price.</p> <p>15 Q. Okay. What -- what is -- what</p> <p>16 makes up this product? Is it a dried, liquid?</p> <p>17 A. It's a liquid whole egg.</p> <p>18 Q. Okay. How is it different than</p> <p>19 the retail liquid product you make?</p> <p>20 A. Because it's a whole egg, they're</p> <p>21 getting the entire egg.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">433</p> <p>1 A. Dried eggs, the majority of dried</p> <p>2 eggs are contract bids.</p> <p>3 Q. And are they -- does your</p> <p>4 profitability, is it impacted by Urner Barry?</p> <p>5 A. No. Not when we -- not once --</p> <p>6 well, I'll take that back. On some products,</p> <p>7 they are. The whites -- example -- the yolks</p> <p>8 and whites would be.</p> <p>9 Q. Okay.</p> <p>10 A. For the same reason the whites on</p> <p>11 the retail.</p> <p>12 Q. Okay.</p> <p>13 A. But whole egg would not.</p> <p>14 Q. Okay. Any -- any other -- so on</p> <p>15 the egg product side, any other egg products</p> <p>16 that -- we're talking about the approximately</p> <p>17 20 percent that either have some impact or no</p> <p>18 impact by Urner Barry. Any other egg products?</p> <p>19 A. We didn't go into all the</p> <p>20 subcategories of frozen if you want to. I think</p> <p>21 yesterday we just said we did frozen, I believe.</p> <p>22 Q. I'm just talking about now the big</p>
<p style="text-align: right;">432</p> <p>1 A. It would be like taking an egg,</p> <p>2 breaking it open and selling everything.</p> <p>3 Q. Okay.</p> <p>4 A. The difference in the retail</p> <p>5 liquid is you're only selling the egg whites to</p> <p>6 those retail customers. So the egg whites make</p> <p>7 up about 60 percent of the egg. The other</p> <p>8 remainder part is 30 percent yolk and 10 percent</p> <p>9 soup, which is incidental whole egg that comes</p> <p>10 off of it. Soup, it's a term we use in the</p> <p>11 industry. So that product because you're only</p> <p>12 selling 60 percent, what happens to that the</p> <p>13 other 40 percent influences your bottom line on</p> <p>14 the other 60 percent because you don't control</p> <p>15 you don't have that at a price, so you're only</p> <p>16 fixing the whites price.</p> <p>17 Q. Got it. Why wouldn't the Urner</p> <p>18 Barry market impact your pricing of the bag in a</p> <p>19 box product?</p> <p>20 A. Because we take the market out of</p> <p>21 it when I issue a fixed price.</p> <p>22 Q. Okay. What about dried eggs?</p>	<p style="text-align: right;">434</p> <p>1 picture, your approximation of 80 percent Urner</p> <p>2 Barry, 20 percent have some or no impact by</p> <p>3 Urner Barry. On that 20 percent, any other egg</p> <p>4 product we haven't talked about?</p> <p>5 A. There was a one year period back</p> <p>6 approximately 2010 that we did a fixed price for</p> <p>7 some Kraft's liquid products.</p> <p>8 Q. And were those whole eggs?</p> <p>9 A. It was the -- yes. The whole mix</p> <p>10 and the salt yolk.</p> <p>11 Q. Any others?</p> <p>12 A. On some of the whole egg, we've</p> <p>13 got -- like the Cracker Barrel there was some</p> <p>14 whole egg totes for Main Street Muffins in</p> <p>15 Columbus, Ohio, that we sold to a distributor,</p> <p>16 Ohio Farmers that would ask for fixed pricing.</p> <p>17 Q. And what type of -- what type of</p> <p>18 egg product made up that?</p> <p>19 A. They purchased whole egg and egg</p> <p>20 whites.</p> <p>21 Q. So the egg whites would be subject</p> <p>22 to Urner Barry, the whole egg would not; is that</p>

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<p style="text-align: right;">435</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. Any others?</p> <p>4 A. Skinner Baking in Omaha, Nebraska.</p> <p>5 Let's see. We've done a fixed price for them in</p> <p>6 the past on whole egg in totes and a few in bag</p> <p>7 in a box.</p> <p>8 Q. Okay.</p> <p>9 A. Sometime between 2000 to 2012, we</p> <p>10 were selling to Oleksky in Chicago, and some of</p> <p>11 his customers before we had gave fixed pricing</p> <p>12 on whole egg bag in a box. He's from Poland.</p> <p>13 We also trade liquid tankers with</p> <p>14 other egg breakers and those would be sold --</p> <p>15 they can be sold both ways. They can be sold at</p> <p>16 a fixed price or a price off of Urner Barry.</p> <p>17 Q. Okay.</p> <p>18 A. I can keep thinking of others.</p> <p>19 There could be others we sold fixed, but most</p> <p>20 common is Urner Barry.</p> <p>21 Q. Okay. With respect to your egg</p> <p>22 products and how those would break out on an</p>	<p style="text-align: right;">437</p> <p>1 Urner Barry market. Do you remember that</p> <p>2 testimony?</p> <p>3 A. It would have the customers that</p> <p>4 bought off the respective markets; correct.</p> <p>5 Q. Did you also prepare a summary for</p> <p>6 them that would compare what they were paying</p> <p>7 for their specialty eggs to their commodity</p> <p>8 eggs?</p> <p>9 A. No.</p> <p>10 Q. Did you all track that internally,</p> <p>11 what that spread was between the specialty egg</p> <p>12 price and the -- the eggs priced off of Urner</p> <p>13 Barry?</p> <p>14 MR. MONICA: Objection. Vague.</p> <p>15 THE WITNESS: It wasn't tracked</p> <p>16 priced off of Urner Barry, but the document we</p> <p>17 just discussed that had the summary with all the</p> <p>18 products' percentages, not only had the volume</p> <p>19 percentages, it shows the pricing received, and</p> <p>20 specialty eggs are one of those categories, so</p> <p>21 it would have that broke out in that document.</p> <p>22 BY MR. STUEVE:</p>
<p style="text-align: right;">436</p> <p>1 annual basis, the different types of egg</p> <p>2 products, where would that summary be reflected?</p> <p>3 A. It would be in a -- in a document.</p> <p>4 Q. And what document would that be</p> <p>5 in?</p> <p>6 A. It's a document that's compiled --</p> <p>7 it gives a break out of all of our shell eggs,</p> <p>8 dried products, frozen products and inedible</p> <p>9 products. It's a yearly summary.</p> <p>10 Q. Prepared at the end of the year?</p> <p>11 A. Yes.</p> <p>12 Q. Did you keep those?</p> <p>13 A. Yes.</p> <p>14 Q. Would those have been produced to</p> <p>15 counsel?</p> <p>16 A. Yes.</p> <p>17 MR. MONICA: They have been</p> <p>18 produced.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. You had indicated earlier that</p> <p>21 there was a document that would track the</p> <p>22 difference between the Rose Acre market and the</p>	<p style="text-align: right;">438</p> <p>1 Q. You could compare the pricing you</p> <p>2 were getting for specialty eggs to the pricing</p> <p>3 you were getting for commodity eggs from that</p> <p>4 document?</p> <p>5 MR. MONICA: Objection. Vague.</p> <p>6 You can answer.</p> <p>7 THE WITNESS: The document -- like</p> <p>8 I said, the document does show for dried</p> <p>9 product, the average price for the year.</p> <p>10 Liquid product, it has -- the</p> <p>11 specialties aren't subcategory broke out just in</p> <p>12 general.</p> <p>13 BY MR. STUEVE:</p> <p>14 Q. Specialty egg -- is it specialty</p> <p>15 egg product?</p> <p>16 A. No.</p> <p>17 Q. Okay. So if you would, the</p> <p>18 price -- so in there, how was -- how was the</p> <p>19 average pricing determined for the specialty egg</p> <p>20 that's on that document?</p> <p>21 A. It's a -- from all of our sales</p> <p>22 files that's been produced, it would just be a</p>

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<p style="text-align: right;">439</p> <p>1 summary of the price the customers pay.</p> <p>2 Q. Is it an average?</p> <p>3 A. Yes.</p> <p>4 Q. For all customers?</p> <p>5 A. Yes.</p> <p>6 Q. Then from customer to customer in</p> <p>7 a particular year for the same specialty egg</p> <p>8 product, was there any material difference in</p> <p>9 the prices they were getting?</p> <p>10 MR. MONICA: Objection. Vague.</p> <p>11 THE WITNESS: On -- I guess --</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. On specialty eggs?</p> <p>14 A. You're asking me if there's a</p> <p>15 different price that customers pay for specialty</p> <p>16 eggs?</p> <p>17 Q. Materially different? Was there a</p> <p>18 significant gap between what customer A would</p> <p>19 pay for the same specialty product and customer</p> <p>20 B in any particular year?</p> <p>21 A. There would be on Egglund's Best.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">441</p> <p>1 going to be in a similar range price.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. Okay. In the summary document</p> <p>4 would it also have then your -- the average</p> <p>5 commodity egg price that you got?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And in looking at that, is</p> <p>8 it fair to say that the average specialty egg</p> <p>9 price was typically higher than the commodity</p> <p>10 egg price?</p> <p>11 A. On a yearly average, the specialty</p> <p>12 egg price would be higher.</p> <p>13 Q. Is there a typical range that that</p> <p>14 is higher?</p> <p>15 A. No. Because it's going to vary</p> <p>16 year to year, depending on the markets.</p> <p>17 Q. Okay. All right.</p> <p>18 With respect to your commodity egg</p> <p>19 pricing, what would you -- let me ask you this.</p> <p>20 How did you account for your input cost, for</p> <p>21 example, increases, would you go back to a</p> <p>22 customer that you had an existing contract in</p>
<p style="text-align: right;">440</p> <p>1 A. Because we sell Egglund's Best</p> <p>2 internally between franchisees, so if I sell to</p> <p>3 another franchisee, it's a different cost</p> <p>4 compared to if I'm selling it to a retailer,</p> <p>5 because on Egglund's Best, you pay either</p> <p>6 royalty or you pay MSF. You pay to Egglund's</p> <p>7 for promotion and advertising, and if I just</p> <p>8 sell the product the other franchisee would be</p> <p>9 obligated to support the product, not me. So</p> <p>10 those kind of sales would show a difference if</p> <p>11 you're looking at a sales report because those</p> <p>12 costs aren't added in. The producer who buys it</p> <p>13 from me then would in turn be responsible for</p> <p>14 those costs.</p> <p>15 Q. If you put that example out, the</p> <p>16 specialty egg prices you would sell to your</p> <p>17 specialty egg customers in any particular year,</p> <p>18 would the pricing be similar?</p> <p>19 MR. MONICA: Objection. Vague and</p> <p>20 ambiguous. You can answer.</p> <p>21 THE WITNESS: Like products of</p> <p>22 specialty eggs sold to different customers are</p>	<p style="text-align: right;">442</p> <p>1 and lay out, look here, our costs have gone</p> <p>2 up -- I'm specifically talking about the</p> <p>3 specialty egg side, would you go back to them</p> <p>4 and say, look, our costs have gone up we need to</p> <p>5 adjust price?</p> <p>6 MR. MONICA: Objection. Vague.</p> <p>7 THE WITNESS: You said two things.</p> <p>8 You started out talking about commodity and you</p> <p>9 switched to specialty.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. Let me back up. I appreciate</p> <p>12 that.</p> <p>13 Let me focus on -- let me just ask</p> <p>14 you the general question.</p> <p>15 A. Okay.</p> <p>16 Q. What were your practice if there</p> <p>17 were a significant change in your input costs</p> <p>18 and I'm talking about an increase, what was your</p> <p>19 practice?</p> <p>20 A. On which product?</p> <p>21 Q. Specialty eggs.</p> <p>22 A. Okay. On specialty eggs the</p>

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<p style="text-align: right;">443</p> <p>1 biggest change in cost is going to be feed. So 2 if we had a significant increase in feed, yes, 3 we have went back to customers and explained to 4 them what our cost change on feed was and asked 5 for a price increase. That's typical practice. 6 Q. Any other change that would 7 precipitate you going back to your customers 8 with respect to specialty eggs? 9 A. We've had customers change 10 packaging, asked to go from, for example, a pulp 11 carton to either maybe a pulp label carton or to 12 a clear carton. And there's a significant 13 difference in packaging costs, so if that's a 14 customer request we would go to the customer and 15 explain the difference in the pricing for the 16 packaging and ask for that cost to be passed 17 through. 18 Q. Okay. Any other circumstances 19 that would precipitate you going to your 20 customers concerning your specialty egg pricing? 21 A. If we go to organics, because we 22 purchase organics, if our supplier comes to us</p>	<p style="text-align: right;">445</p> <p>1 look, we want to renegotiate our specialty egg 2 price? 3 MR. MONICA: Objection. 4 Hypothetical and compound. You may answer. 5 THE WITNESS: I don't recall that 6 customer coming to me and asking for to us lower 7 a specialty egg fixed price because of the Urner 8 Barry market, no. 9 BY MR. STUEVE: 10 Q. Do you recall them ever coming to 11 you and ask for you to lower your price? 12 MR. MONICA: Objection. Vague. 13 THE WITNESS: I don't recall a 14 specific instance of that. No. 15 BY MR. STUEVE: 16 Q. So sitting here today, you don't 17 ever remember lowering your specialty egg price 18 upon a customer's request? 19 A. Not during the time we're selling 20 them. You know, if it's a bid period then 21 you're -- everything's opened up to competition 22 and prices may change at that time, but not</p>
<p style="text-align: right;">444</p> <p>1 but their increase would be basically for the 2 same reason. If they have an increase on 3 organic feed they come to us ask for an 4 increase, so we go to our customers. So it's a 5 different feed but it's just coming from a 6 different source versus us buying the feed, it's 7 from our supplier. 8 Q. Any other circumstances? 9 A. Not during the time selling, only 10 if a new bid came up then it's all start over 11 with the bid. 12 Q. Now, were the circumstances in 13 which a customer would come to you and ask for a 14 price change with respect to specialty eggs? 15 A. What's the question? 16 Q. So let's say, for example, there 17 is a declining Urner Barry market and a customer 18 has a fixed contract with respect to specialty 19 egg pricing, and there's greater and greater gap 20 between their specialty egg price and their 21 commodity egg price. Would a customer approach 22 you, and I'm talking about Rose Acre and say,</p>	<p style="text-align: right;">446</p> <p>1 during the time we're selling them. No. I 2 don't recall. 3 Q. Let's talk about that. Is 4 there -- have you had customers during that bid 5 process discuss with you the price variance 6 between what they're paying for the specialty 7 eggs and the commodity eggs? 8 MR. MONICA: Objection. Vague. 9 You can answer. 10 THE WITNESS: No. Not that I 11 recall. No. 12 BY MR. STUEVE: 13 Q. Okay. Let's focus on commodity 14 eggs now. Are there circumstances in which your 15 input costs changed that you would go to the 16 customer and ask to change the commodity egg 17 price, that you can think of? 18 A. Yes. 19 Q. Okay. Does it happen very often? 20 A. No. 21 Q. Okay. How frequently does it 22 happen?</p>

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<p style="text-align: right;">447</p> <p>1 A. Maybe two or three times over the 2 last ten years. 3 Q. Okay. So we're talking about a 4 very infrequent circumstance; is that right? 5 A. Yes. 6 Q. All right. You were sitting there 7 thinking about it. What's the example you 8 thought about? 9 A. Well, the carton packaging costs. 10 Recently we've had some surcharging on 11 packaging. There was a fire at one of the 12 manufacturers, we went to the customers asked 13 them -- a lot of it the customers control their 14 packaging, so since our price went up, we asked 15 for price increases on those. 16 Q. Now, Mr. Rust, we took his 17 deposition, said that you would track the spread 18 between the Urner Barry quote and the 19 noncertified Urner Barry quote? 20 MR. MONICA: Objection. 21 Mischaracterizes testimony. 22 THE WITNESS: There's -- on liquid</p>	<p style="text-align: right;">449</p> <p>1 A. The Urner Barry markets. 2 Q. And do you keep that historical 3 data? 4 A. Yes. 5 Q. In your files? 6 A. Yes. 7 Q. Was that provided to your counsel? 8 A. Yes. 9 Q. The -- today, what percentage of 10 the shell egg market is produced by companies 11 that are certified? 12 MR. MONICA: Objection. Vague. 13 You can answer. 14 THE WITNESS: Just shell egg 15 producers? 16 BY MR. STUEVE: 17 Q. Uh-huh. 18 A. I don't -- if we're only talking 19 shell eggs, to my knowledge, there's -- it's a 20 large percentage. I know that -- the only 21 number I know is there's 80, I think roughly 22 85 percent of all producers are participants in</p>
<p style="text-align: right;">448</p> <p>1 products, only on liquid, there is a certified 2 Urner Barry quote. There's -- today. There's 3 no -- there's a noncertified and certified for 4 liquid yolk, whole egg and whites only. 5 Pasteurized and unpasteurized. There's no Urner 6 Barry -- Urner Barry only quotes one market 7 today for shell eggs. One market for each 8 region. Urner Barry puts a brown shell market, 9 as well. 10 BY MR. STUEVE: 11 Q. The Urner Barry shell egg quote, 12 you're saying there is no distinction between 13 certified and noncertified; is that correct? 14 A. No. Today there's only one 15 market. 16 Q. Has there ever been since 2009 a 17 Urner Barry certified quote and non-Urner Barry 18 certified quote for shell eggs? 19 A. I -- I don't remember for sure. I 20 would have to look at the markets. 21 Q. Where -- what document would you 22 look at to refresh your recollection?</p>	<p style="text-align: right;">450</p> <p>1 UEP animal welfare program. 2 Now, the breakdown exactly how 3 many is liquid, how many is shell, I don't know 4 for sure. I don't know the exact amount, but it 5 would be a large percentage. 6 Q. Okay. You mentioned yesterday 7 Sonstegard? 8 A. Yes. 9 Q. They sell liquid eggs; right? The 10 vast majority of their eggs are sold to folks 11 who are egg product companies; right? 12 MR. MONICA: Objection. Vague. 13 Compound. You can answer. 14 THE WITNESS: They sell liquid 15 products. They sell dried products and they 16 sell shell eggs. 17 BY MR. STUEVE: 18 Q. What percentage of their business 19 are they selling shell eggs? 20 A. I don't know. 21 Q. It's a pretty small percentage; is 22 it not?</p>

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<p style="text-align: right;">451</p> <p>1 A. I don't know. They tend to sell a 2 lot more shell eggs when the markets are 3 favorable to them to sell shell eggs. 4 Q. Do you know who they sell those 5 shell eggs to? 6 A. Yesterday I said they sell in 7 California and I didn't know the rest of their 8 customers. 9 Q. Do you know the name of the 10 company in California? 11 A. Hidden Valley Ranch. 12 Q. Okay. 13 (Exhibit Number 573 was marked for 14 identification.) 15 BY MR. STUEVE: 16 Q. Show you what's been marked as 17 Exhibit 573. 18 MS. REDDING: Can I get the Bates 19 number? 20 MR. STUEVE: RAFKS 0010568. 21 MS. REDDING: Thank you. 22 BY MR. STUEVE:</p>	<p style="text-align: right;">453</p> <p>1 those names? 2 Q. No. 3 A. Okay. And I -- that's the members 4 of the Board. There are some advisors that I'm 5 not positive if they're on this e-mail. There's 6 some advisors to the Board. 7 Q. And do you remember receiving this 8 e-mail in February 2012? 9 MR. MONICA: If you're on the 10 phone, could you put your outgoing line on mute? 11 We can hear typing. Thank you. 12 THE WITNESS: I don't remember it. 13 No. 14 BY MR. STUEVE: 15 Q. Okay. You can confirm for me, 16 though, that the certified large price is \$0.78 17 compared to the noncertified at 56 and a half 18 which is 21 and a half cent spread; correct -- 19 21 and a half cent spread; correct? 20 MR. MONICA: Objection. Calls for 21 speculation. 22 THE WITNESS: I can't confirm that</p>
<p style="text-align: right;">452</p> <p>1 Q. Did you review this document in 2 preparation for your deposition today? 3 A. No. 4 Q. This is from markets, Rust, and it 5 says to the family. Do you know who falls 6 within that list? 7 A. Yes. 8 Q. Who falls within that list? 9 A. It would be Lois Rust, Anthony 10 Rust, James Rust, John Rust, Robert Rust, Ruth 11 Ann Hendrix, Karen McQuarry, and I believe some 12 of the grandkids are on the list. I -- they're 13 either on the family list or the Board list. I 14 can -- there's some of the previous, the six -- 15 besides Lois the other ones I mentioned, some of 16 their kids are on this list, too, but I don't 17 know all of them who's on it. 18 Q. The Board, who's on that list? 19 A. On the Board list would be Tony 20 Wesner, David Hurd, Victor Rigterink, myself, 21 then some of the family members we've already 22 mentioned. Do you want me to go back through</p>	<p style="text-align: right;">454</p> <p>1 these numbers are accurate, sitting here, no, 2 without looking them up myself, but -- 3 BY MR. STUEVE: 4 Q. But you can confirm those are the 5 numbers in the e-mail; correct? 6 A. Those are the numbers written 7 here, correct. 8 Q. The numbers that are contained in 9 this e-mail from Marcus Rust shows the 10 difference between \$0.78 and 56 and a half cents 11 for the noncertified is 21.5 cent difference; 12 correct? 13 A. Those are numbers that are written 14 here for that particular day in sales trading. 15 Q. And can you tell what the source 16 was he was relying on? 17 A. In the e-mail -- if this is 18 correct, it states Egg Clearinghouse, Inc. 19 Q. And was that a website that you 20 utilized? 21 A. That me personally? 22 Q. Yeah.</p>

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14 (Pages 455 to 458)

<p style="text-align: right;">455</p> <p>1 A. Yes. I use Egg Clearinghouse.</p> <p>2 Q. And what -- what are the reasons</p> <p>3 you use it?</p> <p>4 A. To trade surplus and -- to trade</p> <p>5 eggs and to buy eggs on.</p> <p>6 Q. Okay. And do you trade and buy</p> <p>7 eggs for Rose Acre?</p> <p>8 A. I'm responsible to oversee the</p> <p>9 person that works with the Egg Clearinghouse.</p> <p>10 Q. And who is that person?</p> <p>11 A. Bob Niewedde.</p> <p>12 Q. He is?</p> <p>13 A. And -- for shell eggs, and Aaron</p> <p>14 Heironimus for liquid eggs.</p> <p>15 (Exhibit Number 574 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. Show you what's been marked as</p> <p>19 Exhibit 574, and I'm just going to ask you about</p> <p>20 the top e-mail there in 574. Bates range is</p> <p>21 RAFKS 0000603.</p> <p>22 In the spring of 2012, Sparboe was</p>	<p style="text-align: right;">457</p> <p>1 difference of \$0.24; correct.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. Then what Marcus Rust is saying is</p> <p>4 we need the ability to do both if we want to</p> <p>5 keep our business in certain areas. He's</p> <p>6 referring to the ability to sell both certified</p> <p>7 and noncertified; correct, sir?</p> <p>8 MR. MONICA: Objection. Calls for</p> <p>9 speculation. You can answer.</p> <p>10 THE WITNESS: I can't tell you</p> <p>11 what Marcus was thinking here.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Well, let's read it.</p> <p>14 Our price to DF, would be Dutch</p> <p>15 Farms, right, would have been \$1.08. One and a</p> <p>16 half of Dutch Farms' buyers do not care about</p> <p>17 UEP certification. Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. We need the ability to do both if</p> <p>20 we want to keep our business in certain areas.</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">456</p> <p>1 not UEP certified; correct, sir?</p> <p>2 A. I don't remember for sure. I know</p> <p>3 they rejoined. I don't know exactly when.</p> <p>4 Q. The difference between what they</p> <p>5 were selling their eggs for in the spring of</p> <p>6 2012 compared to Rose Acre's certified eggs</p> <p>7 shows a \$0.24 gap; correct?</p> <p>8 MR. MONICA: Objection. Calls for</p> <p>9 speculation. Misstates what this document says.</p> <p>10 You can answer.</p> <p>11 THE WITNESS: Can you repeat the</p> <p>12 question?</p> <p>13 BY MR. STUEVE:</p> <p>14 Q. Yeah. The -- what's reflected in</p> <p>15 here by Marcus Rust is a \$0.24 gap between Rose</p> <p>16 Acre's price, DF, I assume Dutch Farms, right,</p> <p>17 and Sparboe's; correct?</p> <p>18 MR. MONICA: Objection. You can</p> <p>19 answer.</p> <p>20 THE WITNESS: I mean, I don't know</p> <p>21 if these are real numbers, but in this e-mail</p> <p>22 that you're showing me, it shows that there's a</p>	<p style="text-align: right;">458</p> <p>1 Q. What he's referring to there is</p> <p>2 the ability to sell both UEP certified and</p> <p>3 noncertified; correct, sir?</p> <p>4 MR. MONICA: Objection. Calls for</p> <p>5 speculation. You can answer.</p> <p>6 THE WITNESS: I can't tell you</p> <p>7 what Marcus is thinking here.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Because Rose Acre has agreed that</p> <p>10 it will only market certified eggs, it's</p> <p>11 precluded from selling noncertified eggs to</p> <p>12 Dutch Farms; correct, sir?</p> <p>13 A. No.</p> <p>14 MR. MONICA: Objection.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. It's not?</p> <p>17 A. No.</p> <p>18 Q. Okay. It's your testimony that</p> <p>19 Rose Acre has not agreed to the 100 percent</p> <p>20 rule?</p> <p>21 MR. MONICA: Objection.</p> <p>22 THE WITNESS: I didn't say that.</p>

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15 (Pages 459 to 462)

<p style="text-align: right;">459</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. Okay. What do you understand the</p> <p>3 100 percent rule to be, sir?</p> <p>4 A. That under the 100 percent rule,</p> <p>5 all eggs that Rose Acre produces will be UEP</p> <p>6 certified.</p> <p>7 Q. Right, so all of the eggs it does</p> <p>8 produce is UEP certified; right?</p> <p>9 A. Correct. Except for the</p> <p>10 cage-free.</p> <p>11 Q. And so Rose Acre is unable to sell</p> <p>12 the eggs it produces to Dutch Farms -- let me</p> <p>13 back up.</p> <p>14 Rose Acre has no noncertified eggs</p> <p>15 that it produces that it could sell to Dutch</p> <p>16 Farms; correct?</p> <p>17 A. That we produce, but I can sell</p> <p>18 noncertified eggs.</p> <p>19 Q. I'm not asking about -- you would</p> <p>20 have to go out and buy those; right?</p> <p>21 A. Yes.</p> <p>22 Q. Who would you buy those from?</p>	<p style="text-align: right;">461</p> <p>1 Q. Your cage-free eggs are not</p> <p>2 certified UEP; correct, sir?</p> <p>3 A. They do meet the UEP guidelines.</p> <p>4 Q. There is no certification process,</p> <p>5 correct?</p> <p>6 A. But you can use the certification</p> <p>7 -- they exceed the current guidelines.</p> <p>8 Q. If you can answer my question,</p> <p>9 there is no certification program currently</p> <p>10 being utilized by UEP with respect to cage-free;</p> <p>11 is that correct, sir?</p> <p>12 MR. MONICA: Object. Give me a</p> <p>13 chance to object, you changed the question on</p> <p>14 him but you can go ahead and answer.</p> <p>15 THE WITNESS: Our cage-free eggs</p> <p>16 exceed the UEP certified guidelines so we can</p> <p>17 use the UEP certified on cage-free eggs today.</p> <p>18 What I stated was the UEP is in the process</p> <p>19 currently to write guidelines specifically for</p> <p>20 cage-free eggs, but you do because we already</p> <p>21 meet the UEP guidelines with certified because</p> <p>22 there's no cages and one of the guidelines is</p>
<p style="text-align: right;">460</p> <p>1 A. From a noncertified producer.</p> <p>2 Q. Like who?</p> <p>3 A. Like Sparboe or Kryder come to</p> <p>4 mind.</p> <p>5 Q. As far as the eggs you produce</p> <p>6 from your 22 million hens, you could not sell a</p> <p>7 single one of those to a Dutch Farms if they're</p> <p>8 looking for noncertified; correct, sir?</p> <p>9 MR. MONICA: Objection.</p> <p>10 THE WITNESS: On my own production</p> <p>11 of eggs that are non cage-free, they would all</p> <p>12 be UEP certified on my production.</p> <p>13 BY MR. STUEVE:</p> <p>14 Q. Your cage-free are not certified;</p> <p>15 is that correct?</p> <p>16 A. Today there's no certified rules</p> <p>17 today, certification on -- they would meet --</p> <p>18 our cage-free meet all the guidelines for UEP</p> <p>19 certified, so you can put UEP certified, but</p> <p>20 there is no written standard today. They're</p> <p>21 working on standards for -- currently working on</p> <p>22 standards for cage-free and organics.</p>	<p style="text-align: right;">462</p> <p>1 67 square inches for the birds, and since</p> <p>2 there's no cages, we meet the guidelines along</p> <p>3 with the other animal humane standards for those</p> <p>4 birds, we treat them all the same so we can use</p> <p>5 the UEP certified shield on cage-free eggs</p> <p>6 today.</p> <p>7 BY MR. STUEVE:</p> <p>8 Q. Mr. Hinton, are you changing your</p> <p>9 testimony you just gave five minutes ago that</p> <p>10 your cage-free eggs are not certified?</p> <p>11 MR. MONICA: Objection</p> <p>12 mischaracterizes his prior testimony. Asked and</p> <p>13 answered. You can answer.</p> <p>14 THE WITNESS: Okay. I explained</p> <p>15 to you what -- how we can use the UEP certified</p> <p>16 shield. And that I also stated that the UEP is</p> <p>17 in the process of writing guidelines</p> <p>18 specifically for cage-free eggs. So we can use</p> <p>19 the certified shield on cage-free eggs and we</p> <p>20 do.</p> <p>21 BY MR. STUEVE:</p> <p>22 Q. Sir, there's no 100 percent rule</p>

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16 (Pages 463 to 466)

<p style="text-align: right;">463</p> <p>1 that applies to cage-free eggs; correct?</p> <p>2 MR. MONICA: Objection.</p> <p>3 Foundation. You can answer.</p> <p>4 THE WITNESS: By definition,</p> <p>5 cage-free meets the rule.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Sir, you're not obligated -- you</p> <p>8 can sell cage-free eggs that do not meet the UEP</p> <p>9 animal welfare guidelines; correct?</p> <p>10 A. I can -- you said I can sell</p> <p>11 cage-free eggs that don't meet it?</p> <p>12 Q. Yeah.</p> <p>13 A. Yes.</p> <p>14 Q. That's not true with respect to</p> <p>15 your caged eggs -- caged hen; right?</p> <p>16 MR. MONICA: Objection. Asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: No. I can sell</p> <p>19 caged eggs, too, that don't meet it.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. You cannot sell caged eggs that</p> <p>22 you produce that do not meet the certified?</p>	<p style="text-align: right;">465</p> <p>1 relation to the contact with the State of Kansas</p> <p>2 we pay egg taxes so that's our only contact that</p> <p>3 I know of with the State of Kansas is the fact</p> <p>4 that we pay taxes to the State of Kansas.</p> <p>5 Q. With respect to doing business in</p> <p>6 Kansas, you do business with Aldie's that are</p> <p>7 located in Olathe, Kansas?</p> <p>8 A. Yes.</p> <p>9 Q. How long has that been the case?</p> <p>10 A. Ever since they've been there,</p> <p>11 probably more than 15 years.</p> <p>12 Q. With respect to Menu Foods?</p> <p>13 A. Yes.</p> <p>14 Q. How long have you been doing</p> <p>15 business with Menu Foods?</p> <p>16 A. Probably more than ten years.</p> <p>17 Q. And how long have you been paying</p> <p>18 egg taxes?</p> <p>19 A. Since we've been selling eggs in</p> <p>20 Kansas since Aldie's.</p> <p>21 Q. What about Hy-Vee? Aren't your</p> <p>22 eggs sold at Hy-Vee stores in Kansas?</p>
<p style="text-align: right;">464</p> <p>1 A. That's a different question. That</p> <p>2 I produce? No.</p> <p>3 Q. Now, if you could, could you turn</p> <p>4 to topic 28. This is your contacts with the</p> <p>5 State of Kansas including purchase, sale,</p> <p>6 marketing, offer for sale, attempted sale, or</p> <p>7 manufacture of any goods or services in Kansas,</p> <p>8 along with any business relationships you have</p> <p>9 with entities in Kansas. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What did you do to prepare for</p> <p>12 this topic?</p> <p>13 A. I have personal knowledge of this</p> <p>14 topic.</p> <p>15 Q. Okay. Tell me what your personal</p> <p>16 knowledge is?</p> <p>17 A. We have a couple shell egg</p> <p>18 customers in the State of Kansas, Aldie in</p> <p>19 Olathe, Kansas, and AWG in Kansas City. And</p> <p>20 then our -- in reference to contacts -- then we</p> <p>21 have Menu Foods, it's inedible, that buys</p> <p>22 inedible egg powder for pet food in Kansas. In</p>	<p style="text-align: right;">466</p> <p>1 A. If -- if there's Hy-Vee stores in</p> <p>2 Kansas, yes.</p> <p>3 Q. And, again, how long have you been</p> <p>4 selling Rose Acre eggs at Hy-Vee stores?</p> <p>5 A. We've been supplying the Hy-Vee</p> <p>6 warehousing in Atheny, Iowa since approximately</p> <p>7 May of 2012.</p> <p>8 Q. And is it your testimony you</p> <p>9 didn't do business with any Hy-Vee stores prior</p> <p>10 to that?</p> <p>11 A. No.</p> <p>12 Q. Is that correct?</p> <p>13 A. No.</p> <p>14 Q. That's not correct?</p> <p>15 A. No.</p> <p>16 Q. Okay. With respect to Hy-Vee</p> <p>17 stores, how long have you been doing business</p> <p>18 with Hy-Vee stores?</p> <p>19 A. Most recently was 2012 when we</p> <p>20 started supplying all the Hy-Vee stores.</p> <p>21 Q. Okay.</p> <p>22 A. Prior to that, we've sold eggs to</p>

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17 (Pages 467 to 470)

<p style="text-align: right;">467</p> <p>1 Hy-Vee, and I don't know what stores they went 2 to. We was -- we was one of their suppliers 3 back -- I'm not sure of the exact year. It 4 was -- I can't remember if it was prior to 2000 5 or after 2000, but we were supplying some eggs 6 to Hy-Vee. 7 Q. Starting in either late 1999 or 8 early 2000; is that correct? 9 A. I don't remember the exact year, 10 sir. 11 Q. Would that be true up through 12 2012? 13 A. No. 14 Q. So you stopped at some point and 15 then started back up? 16 A. Yes. 17 Q. Okay. Any other business in the 18 State of Kansas? 19 A. Not that I can think of. 20 Q. You talked about your efforts to 21 solicit business from AWG in 2004, 2006 and 2009 22 and then in early 2013; is that correct, sir?</p>	<p style="text-align: right;">469</p> <p>1 been. Yes. It would be in my files. 2 Q. Okay. When did you solicit that 3 business? 4 A. It would have been in when 5 Wal-Mart did their bid in 2012. 6 Q. And what about Kroger? 7 A. It was in 2011. 8 Q. And what stores in Kansas? 9 A. The Dillons. 10 Q. Do you know, are the Dillons 11 stores are they owned by Kroger? 12 A. They're owned by Kroger. 13 Q. And approximately how many Dillon 14 stores are there in Kansas? 15 A. I don't know. 16 Q. Okay. Now, what about your 17 distributors? Have they distributed Rose Acre 18 eggs in the State of Kansas from 1999 to the 19 present? 20 MR. MONICA: Objection. Calls for 21 speculation. 22 THE WITNESS: I --</p>
<p style="text-align: right;">468</p> <p>1 A. Well, they came to us in 2006 and 2 2013 and asked us for -- but, yes, we've talked 3 with AWG about doing business. 4 Q. You testified about those various 5 times in your testimony yesterday; right? 6 A. Yes. 7 Q. Those would have been contacts 8 with AWG's headquarters in Kansas City, Kansas; 9 correct? 10 A. If it's Kansas. Like I said, I 11 get confused with Kansas City. 12 Q. Have you solicited business from 13 anyone else, any other customers in Kansas? And 14 I'm focusing on '99 up through today? 15 A. Yes. 16 Q. Can you identify those instances? 17 A. Kroger and I believe Wal-Mart has 18 a warehouse in Kansas that we bid on. Kansas or 19 Oklahoma. 20 Q. There's a Wal-Mart warehouse right 21 next to AWG's. Would that have been the one? 22 A. If that's the case, it may have</p>	<p style="text-align: right;">470</p> <p>1 BY MR. STUEVE: 2 Q. Let's take Dutch Farms. 3 A. Okay. They sold to AWG in the 4 past. 5 Q. And would those have been Rose 6 Acre eggs? 7 A. They would have been my eggs, but 8 it would have been AWG's cartons. 9 Q. They would have been Rose Acre 10 eggs? 11 A. Yes. 12 Q. And do you remember what time 13 period? 14 A. No. Like I testified yesterday, I 15 couldn't remember if that was prior to '99 or 16 not. 17 Q. What about any other customers of 18 Dutch Farms in Kansas? 19 A. I don't know where all Dutch 20 Farms -- I don't know all their customers. 21 Q. What about other distributors here 22 that are in the Midwest?</p>

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18 (Pages 471 to 474)

<p style="text-align: right;">471</p> <p>1 MR. MONICA: Objection. Vague.</p> <p>2 THE WITNESS: Distributors of mine</p> <p>3 that may sell eggs into Kansas?</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. Yeah.</p> <p>6 A. I'm not aware of any of them.</p> <p>7 It's possible. I don't know where they all sell</p> <p>8 their eggs.</p> <p>9 Q. Okay.</p> <p>10 MR. STUEVE: I need to take a</p> <p>11 quick restroom break here.</p> <p>12 MR. MONICA: Sounds good.</p> <p>13 THE VIDEOGRAPHER: The time is</p> <p>14 9:15 a.m. and we're going off the record.</p> <p>15 (A brief recess was taken.)</p> <p>16 THE VIDEOGRAPHER: This is the</p> <p>17 start of media unit number two. The time is</p> <p>18 9:27 a.m. and we are back on the record.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. In the last five years, has Rose</p> <p>21 Acre purchased non-certified shell eggs and sold</p> <p>22 them to one of its shell egg customers?</p>	<p style="text-align: right;">473</p> <p>1 Q. What did you do to prepare</p> <p>2 yourself for that topic?</p> <p>3 A. I reviewed our molts and</p> <p>4 backfilling practices with David Hurd.</p> <p>5 Q. And you testified about your</p> <p>6 discussion with Dave Hurd; is that right?</p> <p>7 A. Yes. I did.</p> <p>8 Q. Anything else?</p> <p>9 A. No. Just my knowledge of the</p> <p>10 subject.</p> <p>11 Q. Now, did you have any contact with</p> <p>12 United Egg Producers or United States Egg</p> <p>13 Marketers prior to Rose Acre joining UEP in</p> <p>14 early 2002?</p> <p>15 A. Contact with a specific person or</p> <p>16 you mean -- I guess I don't -- I mean, you're</p> <p>17 talking about an organization, so that's not a</p> <p>18 person.</p> <p>19 Q. Do you not understand my question?</p> <p>20 A. I guess not.</p> <p>21 Q. Okay. It's my understanding based</p> <p>22 on Marcus Rust's testimony that Rose Acre joined</p>
<p style="text-align: right;">472</p> <p>1 A. No. Not that I can think of.</p> <p>2 Q. If you could turn to topic 20.</p> <p>3 It's my understanding starting with topic 20,</p> <p>4 subpart F through J, you have been designated to</p> <p>5 testify on behalf of Rose Acre; is that correct,</p> <p>6 counsel?</p> <p>7 MR. MONICA: That's correct.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Are you aware of that?</p> <p>10 A. Yes.</p> <p>11 Q. I'm going to jump around here a</p> <p>12 little bit. Let's talk about 20 G, which</p> <p>13 states, your knowledge of and participation in</p> <p>14 any industry or collective efforts to decrease</p> <p>15 the egg supply or raise the price of eggs and</p> <p>16 egg products including through early or</p> <p>17 coordinated molts, changes in flock disposal or</p> <p>18 flock kills, changes to chick placement or</p> <p>19 hatch, hen house vacancies, reduction or</p> <p>20 elimination of backfilling and/or other layer</p> <p>21 hen reductions. Do you see that?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">474</p> <p>1 United Egg Producers in early 2002; is that</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. Prior to that time, did you have</p> <p>5 any contact with United Egg Producers?</p> <p>6 A. I guess who do you mean by United</p> <p>7 Egg Producers?</p> <p>8 Q. Anyone that was involved with the</p> <p>9 management or direction of United Egg Producers?</p> <p>10 A. Yes.</p> <p>11 Q. Who?</p> <p>12 A. Al Pope. Gene Gregory. Prior to</p> <p>13 '02. Those two for sure. I had contact with.</p> <p>14 Q. Okay. Describe to me the nature</p> <p>15 of that contact?</p> <p>16 A. I would see them at industry</p> <p>17 meetings.</p> <p>18 Q. And what industry meetings are you</p> <p>19 referring to, sir?</p> <p>20 A. The -- the Urner Barry marketing</p> <p>21 conference.</p> <p>22 Q. Any others?</p>

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19 (Pages 475 to 478)

<p style="text-align: right;">475</p> <p>1 A. Yeah. The International Egg 2 Commission Conference. 3 Q. Any others? 4 A. Not that I can recall. Well, I 5 saw them at the -- back then it was called 6 Southeastern it's a trade show in Atlanta. 7 Q. Who sponsored that? 8 A. The US Poultry and Egg 9 Association. 10 Q. And where are they located? 11 A. Atlanta, Georgia. 12 Q. And who ran the US Egg and Poultry 13 Association? 14 A. During when? 15 Q. This is prior to 2002 when you had 16 had contact with Al Pope and Gene Gregory? 17 A. I believe Don Balton was the 18 president then. 19 MR. MONICA: Mr. Hinton, please 20 let him finish his questions. 21 BY MR. STUEVE: 22 Q. What was -- was Rose Acre a member</p>	<p style="text-align: right;">477</p> <p>1 A. In the Georgia Conference Center 2 in Atlanta, Georgia. 3 Q. Has that been true -- 4 A. Ever since I've been in the egg 5 business. 6 Q. When did you start going to the US 7 Egg and Poultry Association's trade show? 8 A. It could have been the early '80s. 9 I can't remember which year. 10 Q. All right. Who else would 11 accompany you? 12 A. Do you want specific names? 13 Q. Yes. 14 A. Over the last 30 years? 15 Q. Uh-huh. 16 A. Okay. Start back at the 17 beginning. Bill Knott. Fred Lewis. John 18 Solidine. David Hurd. David Rust. Randy 19 Lawson. Gary Johns. Peggy Johns. Ralph 20 Miller. Ty Harweger. Ralph Miller. Marcus 21 Rust. Victor Rigerink. KY Hendrix. Robert 22 Rust. Josh Marcott.</p>
<p style="text-align: right;">476</p> <p>1 of the US Egg and Poultry Association? 2 A. Yes. 3 Q. From what timeframe? 4 A. I don't know exactly when we 5 joined. It could have been in the '80s possibly 6 I don't remember exactly when. 7 Q. Certainly in the '90s, you would 8 have been members? 9 A. Yes. 10 Q. Are you members today? 11 A. Yes. 12 Q. Approximately what percentage of 13 the egg producers are members of the US Egg and 14 Poultry Association? 15 A. I -- I don't know. 16 Q. Is there a fair number? 17 A. I believe so. 18 Q. And do they host a -- do they host 19 an annual meeting? 20 A. No -- well, they host an annual 21 trade show. 22 Q. And where is that held?</p>	<p style="text-align: right;">478</p> <p>1 Q. Can you spell that, please? 2 A. M-A-R-C-O-T-T. 3 Q. Okay. 4 A. Kent Ford. Amanda Jackson. Ralph 5 Long. Joe Easton, Ron Swafford, 6 S-W-A-F-F-O-R-D. There's many, many others. 7 More can't come to mind right now. 8 Q. Why don't we just focus on the 9 last ten years, so since 2000? 10 A. Okay. 11 Q. Folks that are still employed at 12 Rose Acre? 13 A. Okay. 14 Q. Would that include then David 15 Hurd, Amanda Jackson? 16 A. Yes. 17 Q. And who else? 18 A. The ones, if I can recall -- since 19 I don't have them in front of me, I'll try to 20 recall the ones no longer with us that I 21 mentioned. 22 Q. Bill Knott?</p>

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20 (Pages 479 to 482)

<p style="text-align: right;">479</p> <p>1 A. No longer with us. 2 Q. When did he leave? 3 A. Sometime in the '80s probably. 4 Q. Fred Lewis? No longer with Rose 5 Acre? 6 A. No longer with us. Sorry. 7 Q. Has he been gone for some time? 8 A. Long time. 9 Q. John Solidine? 10 A. Long time gone. 11 Q. David Rust? 12 A. He passed away. 13 Q. Is that Lois' husband? 14 A. Her first -- her ex-husband. 15 Q. Okay. Randy Lawson? 16 A. Still with us. 17 Q. Has he been going for the last 18 several years? 19 A. He didn't go this past year with 20 us. 21 Q. What's his role at Rose Acre? 22 A. Maintenance, egg graders.</p>	<p style="text-align: right;">481</p> <p>1 regional complex manager. 2 Q. Okay. Marcus Rust we know about. 3 Victor Rigerink, we know about. KY Hendrix? 4 A. He's retired. 5 Q. When did he stop going? 6 A. It would have been a few years 7 ago. 8 Q. Robert Rust? 9 A. He's our -- in the IT department. 10 Q. John Marcott? 11 A. He's in the IT department. 12 Q. Kent Ford? 13 A. He's our purchasing manager. 14 Q. And what is he -- what's his 15 general responsibility? 16 A. He's purchasing. He purchases -- 17 he's over all of our, basically supplies. He's 18 just our purchasing agent that purchases for the 19 company. 20 Q. Whatever supplies are necessary to 21 run the various production facilities he's 22 responsible for buying all that, all those</p>
<p style="text-align: right;">480</p> <p>1 Q. Gary Johns? 2 A. Still with us. 3 Q. What's his role? 4 A. Maintenance on egg graders. 5 Q. Peggy Johns? 6 A. She's still with us. 7 Q. What's her role? 8 A. She works with our SQF with our 9 egg safety. 10 Q. Ralph Miller? 11 A. He's still with us. 12 Q. What's his role? 13 A. He's pullet manager. 14 Q. And Ty Harweger is still; right? 15 A. Yes. 16 Q. Joe Easton? 17 A. He's feed department. 18 Q. Ron Swafford? 19 A. He's our quality manager for shell 20 egg quality. 21 Q. Okay. Then Ralph Miller? 22 A. He's still with us. He's a</p>	<p style="text-align: right;">482</p> <p>1 materials? 2 A. Yes. He's responsible for all the 3 POs. His department writes all the POs. 4 Q. POs means purchase orders? 5 A. Purchase orders. So he don't 6 necessarily negotiate all the things -- the 7 regional managers for each farm that they would, 8 you know, decide some of the big major items, 9 but just general day to day things, you know, 10 soap for the washers, things like that, I mean 11 he would oversee tape for tape machines. He 12 works with the packaging suppliers. 13 Q. And then we talked about Amanda 14 Jackson. Is it Ralph Long? 15 A. Yes. He's pullet manager. 16 Q. So currently is there a fairly 17 large contingency that goes to the trade show? 18 A. I believe there was maybe eight of 19 us this past year. 20 Q. Okay. And then approximately how 21 many folks typically go to the United Egg 22 Producers annual meeting?</p>

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21 (Pages 483 to 486)

<p style="text-align: right;">483</p> <p>1 A. The annual meeting?</p> <p>2 Q. Yeah.</p> <p>3 A. Maybe five or six.</p> <p>4 Q. I want to move back to prior to</p> <p>5 2002, we're talking about your contact with Al</p> <p>6 Pope and Gene Gregory, so at these annual</p> <p>7 Southeastern trade shows they would be there on</p> <p>8 behalf of United Egg Producers; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. You would have contact with them</p> <p>11 during that time?</p> <p>12 A. Yes. They had a booth. They</p> <p>13 always had a booth at the show. I can't recall</p> <p>14 any time. But I mean, they had a booth and I</p> <p>15 would go past their booth.</p> <p>16 Q. Okay. You also indicated that you</p> <p>17 would see them at the International Egg</p> <p>18 Commission Conference?</p> <p>19 A. Yes.</p> <p>20 Q. Was that an annual conference?</p> <p>21 A. Yes. There's a spring and a fall.</p> <p>22 Q. Would you go to both, typically?</p>	<p style="text-align: right;">485</p> <p>1 Q. Where is that at?</p> <p>2 A. It -- '02. Years ago it was in</p> <p>3 Atlantic City. Then it moved to Las Vegas. It</p> <p>4 was in Orlando one year and they went back to</p> <p>5 Vegas. It's been in Vegas ever since.</p> <p>6 Q. Would UEP have a booth there?</p> <p>7 A. No. There's no booths.</p> <p>8 Q. You would run into them there; is</p> <p>9 that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Did you ever, prior to 2002,</p> <p>12 attend any of the United Egg Producers meetings?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Anyone else from Rose Acre attend</p> <p>15 any of the United Egg Producers meetings prior</p> <p>16 to 2002?</p> <p>17 A. I don't remember for sure. I</p> <p>18 don't -- I don't know.</p> <p>19 Q. Did you participate in any of</p> <p>20 their committees prior to 2002, either you or</p> <p>21 anybody at Rose Acre?</p> <p>22 A. Not that I recall.</p>
<p style="text-align: right;">484</p> <p>1 A. Early on, I went to a few of the</p> <p>2 falls. In recent years, I've been going to</p> <p>3 both.</p> <p>4 Q. Prior to 2002?</p> <p>5 A. Prior to 2002, I think I may have</p> <p>6 just went to the fall.</p> <p>7 Q. Would they have a booth there, Al</p> <p>8 Pope and Gene Gregory?</p> <p>9 A. No.</p> <p>10 Q. You would just see them there?</p> <p>11 A. Al, no. Gene, after Al retired,</p> <p>12 Gene came to a few, I remember.</p> <p>13 Q. But Al Pope would have been prior</p> <p>14 to 2002 would have been the head?</p> <p>15 A. It would have been Al then, yes.</p> <p>16 Q. Gene Gregory was kind of his right</p> <p>17 hand man at that time?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Then you also</p> <p>20 mentioned the Urner Barry marketing conference.</p> <p>21 How often was that?</p> <p>22 A. It's annual.</p>	<p style="text-align: right;">486</p> <p>1 Q. Okay. So other than these</p> <p>2 contacts at the conferences, you had no other</p> <p>3 contact with Al Pope or Gene Gregory; is that</p> <p>4 correct?</p> <p>5 MR. MONICA: Objection. Vague.</p> <p>6 Ambiguous.</p> <p>7 THE WITNESS: It's too long ago</p> <p>8 for me to remember. I remember seeing them at</p> <p>9 the conferences, but I don't recall.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. Okay. So you knew who they were?</p> <p>12 A. Yes.</p> <p>13 Q. You knew what United Egg Producers</p> <p>14 was about?</p> <p>15 A. Yes.</p> <p>16 Q. Did you receive any of their --</p> <p>17 they have this United Voices. Would you receive</p> <p>18 their newsletter prior to 2002?</p> <p>19 A. Not that I know of.</p> <p>20 Q. Anyone else at Rose Acre?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Do you ever remember being</p>

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<p style="text-align: right;">487</p> <p>1 solicited to join United Egg Producers prior to</p> <p>2 2002?</p> <p>3 MR. MONICA: By you, you mean Rose</p> <p>4 Acre; right?</p> <p>5 MR. STUEVE: Uh-huh.</p> <p>6 THE WITNESS: For Rose Acre to be</p> <p>7 solicited?</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Yeah.</p> <p>10 A. Yeah. I think so. I think that</p> <p>11 in conversations that -- don't know exactly</p> <p>12 when, and if it was one of the conferences. I</p> <p>13 mean, I solicited a meeting -- you know, you</p> <p>14 guys ought to be thinking about joining United</p> <p>15 Egg Producers. There could have conversations.</p> <p>16 I'm sure there was.</p> <p>17 Q. Did you attempt to encourage</p> <p>18 management to join United Egg Producers?</p> <p>19 A. Did I personally?</p> <p>20 Q. Yes.</p> <p>21 A. No.</p> <p>22 Q. Did you have a view one way or the</p>	<p style="text-align: right;">489</p> <p>1 that they joined. Do you know how much earlier</p> <p>2 prior to February 2002 you would have had this</p> <p>3 conversation?</p> <p>4 A. No. I don't.</p> <p>5 MR. MONICA: Let him finish.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Do you recall documenting at that</p> <p>8 time the communication with any customer that --</p> <p>9 about the UEP certified program?</p> <p>10 A. I don't remember.</p> <p>11 Q. Do you remember the specific</p> <p>12 customer that you believe had indicated to you</p> <p>13 that if Rose Acre did not join the UEP certified</p> <p>14 program, they would drop your business?</p> <p>15 A. Wal-Mart.</p> <p>16 Q. Who at Wal-Mart told you that?</p> <p>17 A. CCF Brands.</p> <p>18 Q. So this was the egg broker for</p> <p>19 Wal-Mart told you that?</p> <p>20 A. It was -- CCF Brands was a company</p> <p>21 I sold eggs to that supplied Wal-Mart.</p> <p>22 Q. Any other customers?</p>
<p style="text-align: right;">488</p> <p>1 other?</p> <p>2 A. No. Before 2002? No.</p> <p>3 Q. Were you involved in the decision</p> <p>4 to join in 2002?</p> <p>5 A. Yes.</p> <p>6 Q. You were involved?</p> <p>7 A. Yes.</p> <p>8 Q. How were you involved?</p> <p>9 A. Because in 2002 with the animal</p> <p>10 welfare program, I had customers that were going</p> <p>11 to require the UEP certified program and so I</p> <p>12 was asked by Marcus about, you know, customers</p> <p>13 and what it would mean if we, you know, weren't</p> <p>14 a member. I said we would lose customers over</p> <p>15 it if we didn't join. So ultimately, it wasn't</p> <p>16 my decision, but I was asked questions about it.</p> <p>17 Q. And when did you have this</p> <p>18 conversation with Marcus?</p> <p>19 A. I don't remember for sure. It</p> <p>20 would have been prior to joining.</p> <p>21 Q. All right. And we believe we've</p> <p>22 looked at the documents it was in February 2002</p>	<p style="text-align: right;">490</p> <p>1 MR. MONICA: Objection. Vague.</p> <p>2 THE WITNESS: Kroger is one of my</p> <p>3 customers who wanted UEP certified also.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. I'm asking you prior to joining,</p> <p>6 do you recall anyone else other than CCF Brands</p> <p>7 telling you that if you did not join the UEP</p> <p>8 certified program, you would lose business?</p> <p>9 MR. MONICA: Objection. You can</p> <p>10 answer.</p> <p>11 THE WITNESS: Kroger.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Who at Kroger?</p> <p>14 A. Gary Stull.</p> <p>15 Q. Is he still with Kroger?</p> <p>16 A. No.</p> <p>17 Q. What was his position at Kroger at</p> <p>18 the time?</p> <p>19 A. Egg buyer.</p> <p>20 Q. And when did you have this</p> <p>21 conversation with Gary Stull?</p> <p>22 A. I don't remember exactly.</p>

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23 (Pages 491 to 494)

<p style="text-align: right;">491</p> <p>1 Q. Was it prior to Rose Acre joining 2 UEP?</p> <p>3 A. I had a lot of conversations with 4 Gary. I can't recall exactly the timeframe.</p> <p>5 Q. It could have been afterwards?</p> <p>6 A. Like I said, I don't exactly 7 recall when.</p> <p>8 Q. Okay. Do you have any specific 9 recollection of any customer other than Wal-Mart 10 that you're sure that you had a communication 11 with prior to joining UEP?</p> <p>12 A. I had conversations with customers 13 every day. If you're asking me prior to 2000 -- 14 I just can't remember.</p> <p>15 Q. But you do have a specific 16 recollection that CCF Brands told you prior to 17 Rose Acre joining UEP that if they didn't join 18 the UEP certified program, that they would lose 19 business?</p> <p>20 MR. MONICA: Objection. Asked and 21 answered. You can answer again. 22</p>	<p style="text-align: right;">493</p> <p>1 THE WITNESS: I'm not sure. Which 2 standards are you referring to for Wal-Mart?</p> <p>3 BY MR. STUEVE:</p> <p>4 Q. Were you aware of other standards 5 that were being implemented, for example, by FMI 6 at that time?</p> <p>7 A. In regards to FMI, back then it 8 was my understanding that FMI, at the direction 9 of their member supermarkets, were wanting -- 10 because of pressure from the animal rights 11 groups, that there was pressure onto the 12 supermarkets that they needed to adopt some 13 animal welfare program guidelines. And that's 14 when the contact from what I remember was made 15 with -- UEP made contact or FMI jointly along 16 with NCCR, National Council of Chain Restaurants 17 had meetings with UEP to discussed formulation 18 of a scientific based animal welfare guideline 19 that could be standard through the industry so 20 we didn't end up with multiple animal welfare 21 programs for every customer.</p> <p>22 And for us as a company, for Rose</p>
<p style="text-align: right;">492</p> <p>1 specifically by CCF Brands that Wal-Mart was 2 going to require us to be part of the UEP 3 certified egg program.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. And you were told that prior to 6 Rose Acre joining UEP. Is that your testimony?</p> <p>7 A. To the best I can recall.</p> <p>8 Q. Now, at that time, did Rose Acre 9 have an animal welfare program in place?</p> <p>10 A. We've always had -- taken care of 11 our birds, because they're our livelihood. So 12 without our birds, we're out of business. So 13 yes, we have an animal welfare program. It 14 wouldn't have been spelled out specifically like 15 the scientific guidelines like the UEP program, 16 but we've always taken care of our birds.</p> <p>17 Q. Did Rose Acre explore the 18 possibility of adopting standards that Wal-Mart 19 had been supporting at that time, non-UEP 20 standards?</p> <p>21 MR. MONICA: Objection. Calls for 22 speculation.</p>	<p style="text-align: right;">494</p> <p>1 Acre, it was very important to have a standard 2 base because we sold to so many different 3 supermarkets it would have been hard to operate 4 our farms if we was operating under different 5 guidelines for many different customers.</p> <p>6 Q. When did you -- you testified 7 about this contact between UEP and FMI. You 8 just testified about that?</p> <p>9 A. Yes.</p> <p>10 Q. Was that during the time -- did 11 that occur prior to Rose Acre joining UEP or 12 afterwards?</p> <p>13 A. I don't recall.</p> <p>14 Q. What's the basis of that 15 understanding you just testified to?</p> <p>16 A. Basis?</p> <p>17 Q. Were you involved on behalf of UEP 18 with those discussions with FMI?</p> <p>19 A. No.</p> <p>20 Q. What is the source of the 21 information that you just testified to under 22 oath?</p>

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24 (Pages 495 to 498)

<p style="text-align: right;">495</p> <p>1 A. It would have been either 2 discussions or information coming from UEP. And 3 I believe there was letters that provided -- 4 that was communications between FMI and NCCR and 5 UEP that was back and forth to the heads of the 6 organizations discussing it. 7 Q. Is it your testimony as a non-UEP 8 member, you would have been receiving these 9 communications? 10 MR. MONICA: Objection as to 11 timeframe. 12 THE WITNESS: No. It depends -- I 13 don't know when I would have received the 14 documentations. 15 BY MR. STUEVE: 16 Q. Sir, when do you believe -- first 17 of all, you've already testified you weren't 18 involved in the communications that supposedly 19 took place between UEP and FMI; correct? 20 A. Correct. 21 Q. You can't tell me sitting here 22 when those communications supposedly took place;</p>	<p style="text-align: right;">497</p> <p>1 Q. I'm asking you, do you recall 2 evaluating McDonald's standards before making 3 the decision to join? 4 A. I don't remember. 5 Q. Did you investigate whether there 6 were other scientific based standards out there 7 that UEP -- excuse me, that Rose Acre could 8 adopt? 9 MR. MONICA: You can answer, but 10 I'm going to lodge an objection, he's not been 11 designated on these topics. You used the term 12 you. You can give him your personal knowledge. 13 Go ahead and answer the question. 14 THE WITNESS: I'm not personally 15 aware -- I wouldn't be personally aware of it. 16 No. 17 BY MR. STUEVE: 18 Q. Okay. Now, you were aware that 19 Rose Acre had concerns about the fact that UEP, 20 before they joined it, was engaged in management 21 supply programs. Were you aware of that? 22 MR. MONICA: Objection.</p>
<p style="text-align: right;">496</p> <p>1 is that correct, sir? 2 A. Not sitting here today. No. 3 Q. Okay. And who told you about 4 these supposed communications that took place 5 between UEP and FMI? 6 A. I don't remember exactly. 7 Q. Were you aware of an animal 8 welfare audit that FMI had in place in 2002? 9 MR. MONICA: Objection. 10 Mischaracterizes, in place. 11 THE WITNESS: I don't remember. 12 BY MR. STUEVE: 13 Q. Did you attempt to investigate, 14 prior to 2002, the standards that were being 15 required by McDonald's? 16 A. I was aware that McDonald's was 17 formulating standards. Yes. 18 Q. Did you evaluate those before 19 making the decision to join UEP certified 20 program? 21 A. I don't recall when McDonald's 22 issued their standards.</p>	<p style="text-align: right;">498</p> <p>1 Mischaracterizes the truth. 2 THE WITNESS: No. I wasn't. 3 BY MR. STUEVE: 4 Q. Were you aware that Lois Rust 5 believed that UEP would engage in shady deals? 6 MR. MONICA: Objection. 7 Mischaracterizes the truth and also vague and 8 ambiguous, calls for speculation. 9 THE WITNESS: No. I'm not aware 10 of that. 11 BY MR. STUEVE: 12 Q. Were you aware of Marcus Rust's 13 intense distrust of UEP and in particular Al 14 Pope and Gene Gregory? 15 A. No. I'm not aware of that. 16 Q. Were you aware of Marcus Rust's 17 intense distrust of Brann & Isaacson, the law 18 firm that provided compliance advice to UEP? 19 A. No. I'm not aware of that. 20 Q. Were you aware that before Rose 21 Acre joined the certified program that Rose Acre 22 was concerned about the underlying purpose of</p>

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<p style="text-align: right;">499</p> <p>1 the certified program, that their concern was</p> <p>2 that it was being used to restrict the supply of</p> <p>3 eggs and boost prices under the false pretense</p> <p>4 of an animal welfare program?</p> <p>5 MR. MONICA: Objection.</p> <p>6 MS. REDDING: Objection.</p> <p>7 MR. MONICA: Mischaracterizes</p> <p>8 facts.</p> <p>9 THE WITNESS: You have to read</p> <p>10 that back. That was a lot.</p> <p>11 (The record was read as</p> <p>12 requested.)</p> <p>13 MR. MONICA: Assert the same</p> <p>14 objection. Add compound to my objection. You</p> <p>15 can go ahead and answer if you understand.</p> <p>16 THE WITNESS: No. I'm not aware</p> <p>17 of that.</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. No one at Rose Acre shared with</p> <p>20 you that they were concerned that the certified</p> <p>21 program and specifically its restriction on cage</p> <p>22 space was being used to boost prices under the</p>	<p style="text-align: right;">501</p> <p>1 least one committee, and I believe Marcus Rust</p> <p>2 served on the Board.</p> <p>3 Q. KY Hendrix joined the producers</p> <p>4 committee for animal welfare; correct?</p> <p>5 A. Yes. I don't know what year he</p> <p>6 joined, but yes, he was on that committee.</p> <p>7 Q. Let me show you what's been marked</p> <p>8 as Exhibit 525. We walked through these with</p> <p>9 Marcus Rust. Use these as a point of reference</p> <p>10 here.</p> <p>11 In 2002, it indicates that Marcus</p> <p>12 Rust was a Board member. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Mr. Rust has confirmed the</p> <p>15 information on 525, but is that consistent with</p> <p>16 your recollection? And I'm specifically</p> <p>17 referring to 2002 here?</p> <p>18 MR. MONICA: I'm going to object</p> <p>19 to the document. You should explain to him what</p> <p>20 it is before he answers any questions about it.</p> <p>21 You've handed him a document</p> <p>22 you've prepared. He doesn't know what it is.</p>
<p style="text-align: right;">500</p> <p>1 alleged agenda of animal rights; is that</p> <p>2 correct?</p> <p>3 MR. MONICA: Objection. Assumes</p> <p>4 facts not in evidence. Compound. You can</p> <p>5 answer.</p> <p>6 THE WITNESS: No. I'm not aware</p> <p>7 of that.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. When you joined UEP -- I'm talking</p> <p>10 about Rose Acre, you in particular were involved</p> <p>11 in several of the committees; is that correct,</p> <p>12 sir?</p> <p>13 Let me rephrase that. Let me</p> <p>14 rephrase that.</p> <p>15 A. Okay.</p> <p>16 Q. I got my yous mixed-up here. When</p> <p>17 UEP joined -- and excuse me. Back up.</p> <p>18 When Rose Acre joined UEP in early</p> <p>19 2002, there were several members of Rose Acre</p> <p>20 that became involved in the UEP; correct?</p> <p>21 A. I don't know what you mean by</p> <p>22 several, but I know I personally served on at</p>	<p style="text-align: right;">502</p> <p>1 I'm sure he's never seen it because you prepared</p> <p>2 it. I object to lack of foundation on this</p> <p>3 document.</p> <p>4 You can answer if you know.</p> <p>5 THE WITNESS: It's too long ago.</p> <p>6 I can't -- I don't remember who served on all</p> <p>7 the committees.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. You remember, though, when you</p> <p>10 served on the Marketing Discovery Committee;</p> <p>11 right?</p> <p>12 A. I remember serving on it. But</p> <p>13 going back, I can't tell you what years.</p> <p>14 Q. You served on it for several</p> <p>15 years; right, sir?</p> <p>16 A. Yes.</p> <p>17 Q. You also knew Marcus Rust served</p> <p>18 on the Board of Directors?</p> <p>19 A. Yes.</p> <p>20 Q. And he still serves on the Board</p> <p>21 of Directors?</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">503</p> <p>1 Q. Exhibit 525 is a document that we</p> <p>2 prepared that summarized the information that</p> <p>3 was provided to us by Rose Acre in its</p> <p>4 interrogatory answers as well as UEP in their</p> <p>5 annual listing of folks who participated in the</p> <p>6 committees; okay?</p> <p>7 A. Okay.</p> <p>8 Q. And it reflects here with respect</p> <p>9 to your participation, you served on the</p> <p>10 Marketing and Price Discovery Committee from --</p> <p>11 in 2002, 2003, 2004, 2005, and 2006; correct?</p> <p>12 A. That's what this document says. I</p> <p>13 can't recall the years I served on the committee</p> <p>14 off the top of my head.</p> <p>15 Q. Okay. But you do recall serving</p> <p>16 on the committee for several years; right?</p> <p>17 A. Yes. I do.</p> <p>18 Q. That was the committee that would</p> <p>19 vote on the coordinated early kills, early</p> <p>20 molts, and hatch reductions; correct?</p> <p>21 MR. MONICA: Objection. Assumes</p> <p>22 facts not in evidence. Mischaracterizes the</p>	<p style="text-align: right;">505</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. Okay. Show you what's been marked</p> <p>3 as Exhibit 532. It's an e-mail communication</p> <p>4 between Gene Gregory and Marcus Rust and then</p> <p>5 Marcus Rust -- excuse me. The lower hand, it's</p> <p>6 from Marcus to Gene Gregory and on top it's Gene</p> <p>7 Gregory to Marcus.</p> <p>8 Did you review this document in</p> <p>9 preparation to responding to topic 20G?</p> <p>10 A. No.</p> <p>11 Q. Concerning Rose Acre's knowledge</p> <p>12 of and participation in any industry or</p> <p>13 collective efforts to decrease the egg supply?</p> <p>14 A. No.</p> <p>15 Q. And, sir, if you would, up at the</p> <p>16 top it says, Marcus, yes. And to think that</p> <p>17 when egg farmers try to manage supply to have</p> <p>18 profitable business. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And not ask for Government hand</p> <p>21 outs, we find ourselves in a lawsuit. Do you</p> <p>22 see that?</p>
<p style="text-align: right;">504</p> <p>1 factual record. You can answer if you know.</p> <p>2 THE WITNESS: I don't recall a</p> <p>3 committee vote. No.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. On early molts. You don't</p> <p>6 remember a committee vote?</p> <p>7 A. No. I don't.</p> <p>8 Q. On early kills?</p> <p>9 A. No.</p> <p>10 Q. Don't recall a committee vote?</p> <p>11 A. No. I don't.</p> <p>12 Q. On hatch reductions?</p> <p>13 A. No.</p> <p>14 Q. Don't recall a committee vote?</p> <p>15 A. No.</p> <p>16 Q. Do you recall a committee vote</p> <p>17 recommending that UEP certified companies only</p> <p>18 buy certified eggs?</p> <p>19 MR. MONICA: Objection.</p> <p>20 Mischaracterizes the factual record. You may</p> <p>21 answer.</p> <p>22 THE WITNESS: No. I don't.</p>	<p style="text-align: right;">506</p> <p>1 A. Yes. I see that.</p> <p>2 Q. Now, Gene Gregory, who was one of</p> <p>3 the leaders of UEP, certainly understood that</p> <p>4 what the Marketing Committee was voting on was</p> <p>5 an attempt to manage supply to have profitable</p> <p>6 business; right, sir?</p> <p>7 MR. MONICA: Objection.</p> <p>8 MS. REDDING: Objection.</p> <p>9 MR. MONICA: Objection. Calls for</p> <p>10 speculation and misinterprets this document.</p> <p>11 You can answer if you know.</p> <p>12 THE WITNESS: Could you repeat the</p> <p>13 question?</p> <p>14 (The record was read as</p> <p>15 requested.)</p> <p>16 MR. MONICA: Same objections.</p> <p>17 THE WITNESS: No. I had no idea</p> <p>18 what Gene Gregory was thinking.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. Did you talk to Marcus Rust about</p> <p>21 this e-mail in preparation to your testimony on</p> <p>22 behalf of Rose Acre with respect to 20G, sir?</p>

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<p style="text-align: right;">507</p> <p>1 A. No.</p> <p>2 Q. Show you what's been marked as</p> <p>3 536. Did you review this document in</p> <p>4 preparation for your deposition today?</p> <p>5 A. No.</p> <p>6 Q. If you could turn to the second</p> <p>7 page of this e-mail from KY Hendrix to Lois</p> <p>8 Rust, dated March 14, 2002. About halfway down,</p> <p>9 it says, I don't really know what this whole</p> <p>10 motive is, but I think there is more to it than</p> <p>11 animal welfare. I think some people think it</p> <p>12 will make them rich or something. I've never</p> <p>13 been and never will be for quotas. It seems to</p> <p>14 me that is somewhat the path they are taking.</p> <p>15 Do you see that?</p> <p>16 A. I see that. Yes.</p> <p>17 Q. You did not speak with KY Hendrix,</p> <p>18 Lois Rust, Anthony Rust, Marcus Rust, Victor</p> <p>19 Rigerink or David Hurd about this document in</p> <p>20 preparation for your testimony on behalf of Rose</p> <p>21 Acre; is that correct, sir?</p> <p>22 A. That's correct.</p>	<p style="text-align: right;">509</p> <p>1 says, I don't think we have anything to be</p> <p>2 ashamed of by putting as many hens per cage as</p> <p>3 conditions permit, as that is doing what is</p> <p>4 economically right for consumers. Do you see</p> <p>5 that?</p> <p>6 A. I see that. Yes.</p> <p>7 Q. Then he states, rather than trying</p> <p>8 to restrict cage space to boost prices under the</p> <p>9 alleged agenda of animal rights. Do you see</p> <p>10 that?</p> <p>11 A. I see that.</p> <p>12 Q. And it's my understanding that you</p> <p>13 were not aware of that concern?</p> <p>14 MR. MONICA: Objection.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. By John Rust, a Board member of</p> <p>17 Rose Acre?</p> <p>18 MR. MONICA: Objection. Vague and</p> <p>19 ambiguous.</p> <p>20 THE WITNESS: I'm not aware of</p> <p>21 this document. No.</p> <p>22 BY MR. STUEVE:</p>
<p style="text-align: right;">508</p> <p>1 Q. Show you what's been marked as</p> <p>2 Exhibit 537.</p> <p>3 MR. BURKE: This is Jason Burke.</p> <p>4 Sorry to interrupt. Would it be possible to get</p> <p>5 Bates numbers on these documents?</p> <p>6 MR. STUEVE: On the exhibits I'm</p> <p>7 not doing Bates numbers, the previously marked</p> <p>8 ones. It's 537.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. Did you review Exhibit 537 in</p> <p>11 preparation for your deposition today?</p> <p>12 A. No.</p> <p>13 Q. All right. This is an e-mail at</p> <p>14 the bottom here from John Rust, he's a member of</p> <p>15 the Board; correct?</p> <p>16 A. Correct.</p> <p>17 Q. To Marcus Rust and this is dated</p> <p>18 February 13, 2008; is that correct, the bottom</p> <p>19 there?</p> <p>20 A. That's what it says. Yes.</p> <p>21 Q. All right. And if you would, in</p> <p>22 that first paragraph there, second sentence, it</p>	<p style="text-align: right;">510</p> <p>1 Q. Or the concern that was voiced by</p> <p>2 a Board member of Rose Acre in February of 2008?</p> <p>3 MR. MONICA: Objection.</p> <p>4 THE WITNESS: I'm not going to</p> <p>5 speculate on what John Rust meant by this. No.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. I want to be clear, though, you</p> <p>8 were not aware as the head of sales at Rose</p> <p>9 Acre, in February of 2008, of the concern that</p> <p>10 rather than trying to restrict cage space to</p> <p>11 boost prices under the alleged agenda of animal</p> <p>12 rights. Were you aware of that concern?</p> <p>13 MR. MONICA: Objection. Vague.</p> <p>14 Objection. Vague, mischaracterizes this</p> <p>15 document. Mischaracterizes the facts. You can</p> <p>16 answer.</p> <p>17 THE WITNESS: As I stated, I'm not</p> <p>18 aware what John Rust means by this.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. Okay. In preparation for your</p> <p>21 deposition today, counsel for Rose Acre did not</p> <p>22 give you this document; correct, sir?</p>

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<p style="text-align: right;">511</p> <p>1 A. Correct.</p> <p>2 Q. You did not in preparation, in</p> <p>3 response to 20G, speak with Marcus Rust or John</p> <p>4 Rust about Exhibit 537; correct, sir?</p> <p>5 A. Correct.</p> <p>6 Q. He goes on to state, we lose the</p> <p>7 moral right to argue for the continued right of</p> <p>8 low cost production cost when we ourselves are</p> <p>9 manipulating the system under false pretenses.</p> <p>10 Do you see that?</p> <p>11 A. I see that.</p> <p>12 Q. All right. And that concern was</p> <p>13 not shared with you by either Marcus Rust or</p> <p>14 John Rust in February of 2008; is that correct,</p> <p>15 sir?</p> <p>16 A. I'm not aware of what John means</p> <p>17 by this.</p> <p>18 Q. In preparation for your testimony</p> <p>19 today, you did not ask John or Marcus Rust about</p> <p>20 what he meant when he says we lose the moral</p> <p>21 right to argue for continued right of low cost</p> <p>22 production cost when we ourselves are</p>	<p style="text-align: right;">513</p> <p>1 would not doubt Marcus Rust on that.</p> <p>2 Q. Okay. And it says under UEP</p> <p>3 Marketing Committee recommendation. It says</p> <p>4 UEP's Marketing Committee met on March 11th, is</p> <p>5 now recommending the industry follow the plan</p> <p>6 identified below. And do you see down below</p> <p>7 it's all flocks, 62 weeks or older be placed</p> <p>8 into a molt starting April 1st and continue</p> <p>9 through July 1st. Do you see that?</p> <p>10 A. Yes. I do.</p> <p>11 Q. Dispose of spent hens four weeks</p> <p>12 earlier than the normal schedule starting</p> <p>13 April 1st and continuing through July 1st. Do</p> <p>14 you see that?</p> <p>15 A. Yes. I do.</p> <p>16 Q. The Marketing Committee was the</p> <p>17 committee you belonged to when UEP joined;</p> <p>18 correct, sir? Excuse me. Let me rephrase that.</p> <p>19 When Rose Acre joined UEP, the</p> <p>20 Marketing Committee is the committee that you</p> <p>21 participated in; right?</p> <p>22 A. I participated in the Marketing</p>
<p style="text-align: right;">512</p> <p>1 manipulating the system under false pretenses;</p> <p>2 correct?</p> <p>3 A. I'm not aware of this document</p> <p>4 before today.</p> <p>5 Q. Show you what's been marked as</p> <p>6 Exhibit 236. Were you shown this document in</p> <p>7 preparation for your deposition today?</p> <p>8 A. No.</p> <p>9 Q. It's -- the title of it is Supply</p> <p>10 Program for April/July period. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And it's to all UEP members up at</p> <p>13 the top; right?</p> <p>14 A. Yes.</p> <p>15 Q. In March of 2002, Rose Acre was</p> <p>16 now a member of UEP; correct?</p> <p>17 A. I don't recall the exact date we</p> <p>18 joined. No.</p> <p>19 Q. We established with Mr. Rust it</p> <p>20 was February 2002. Do you have any reason to</p> <p>21 doubt that?</p> <p>22 A. If -- if Marcus Rust said that, I</p>	<p style="text-align: right;">514</p> <p>1 Committee. I don't recall the dates.</p> <p>2 Q. Now, sir, if you would, let me</p> <p>3 show you what's been marked as Exhibit 527?</p> <p>4 MS. CRABTREE: Did you say 537?</p> <p>5 MR. STUEVE: 527.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. This is United Voices dated</p> <p>8 May 2002. See that up at the top. May 6th?</p> <p>9 A. Yes.</p> <p>10 Q. It's been identified as</p> <p>11 Exhibit 527. Did counsel for Rose Acre show you</p> <p>12 this document in preparation for your deposition</p> <p>13 today?</p> <p>14 A. No.</p> <p>15 Q. If you would, the title right up</p> <p>16 at the top says prices should improve, but</p> <p>17 supply action plan must be followed now. Do you</p> <p>18 see that?</p> <p>19 A. Yes.</p> <p>20 Q. And down at the bottom here it has</p> <p>21 in all bold there, molt all flocks 62 weeks or</p> <p>22 older and continue through July 1st. Do you see</p>

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<p style="text-align: right;">515</p> <p>1 that?</p> <p>2 A. Yes. I do.</p> <p>3 Q. It says here right above that, it</p> <p>4 says, it is in the best interest of everyone to</p> <p>5 follow the recommendation made by UEP's</p> <p>6 Marketing Committee. It is as such, and then</p> <p>7 the recommendation again is stated in bold;</p> <p>8 right, sir?</p> <p>9 A. Yes. It is.</p> <p>10 Q. You would have been a member of</p> <p>11 the Marketing Committee in May of 2002; correct?</p> <p>12 A. I don't remember.</p> <p>13 Q. You did not review this document</p> <p>14 in preparation for Rose Acre's -- in preparation</p> <p>15 for your testimony on behalf of Rose Acre in</p> <p>16 response to 20G; is that correct?</p> <p>17 A. Correct.</p> <p>18 MR. MONICA: I'm just going to</p> <p>19 assert an ongoing objection. You could have</p> <p>20 clearly identified any documents you wanted him</p> <p>21 to look at prior to this deposition. You did</p> <p>22 not do it. You are not asking questions about</p>	<p style="text-align: right;">517</p> <p>1 stability of the industry if some minor supply</p> <p>2 adjustments were not made very quickly. He</p> <p>3 submitted the following motion. Motion it was</p> <p>4 moved by Baker and seconded by Fortin to</p> <p>5 recommend the industry molt all flocks at</p> <p>6 62 weeks and dispose of spent lens by 108 weeks</p> <p>7 and that this plan of action take place</p> <p>8 immediately and carry through until August 1,</p> <p>9 2004. Carried. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Sir, is this the first time you</p> <p>12 were aware that the Board of Directors of UEP,</p> <p>13 in which Mr. Rust sat on, approved a supply</p> <p>14 adjustment program, as I just read?</p> <p>15 MR. MONICA: Objection.</p> <p>16 MS. REDDING: Objection.</p> <p>17 THE WITNESS: One, there's nothing</p> <p>18 that I'm looking at here that would tell me that</p> <p>19 Marcus Rust approved anything.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. Sir, what I'm asking you, if you</p> <p>22 would just read back my question.</p>
<p style="text-align: right;">516</p> <p>1 the topic.</p> <p>2 Q. Showing you what's been marked as</p> <p>3 Exhibit 528. These are the minutes of the Board</p> <p>4 of Director meetings dated May 11th and May 12,</p> <p>5 2004. It's marked as Exhibit 528.</p> <p>6 Were you shown this document by</p> <p>7 Rose Acre's counsel in preparation for your</p> <p>8 testimony in response to 20G?</p> <p>9 A. No.</p> <p>10 Q. You note under the minutes about</p> <p>11 four rows down to the right, KY Hendrix is</p> <p>12 listed there. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And then about four more rows down</p> <p>15 in the middle Marcus Rust is listed there. Do</p> <p>16 you see that?</p> <p>17 A. Yes.</p> <p>18 Q. All right. And then if you would,</p> <p>19 over on the second page, under Marketing</p> <p>20 Committee, it says, Committee Chairman Dolph</p> <p>21 Baker presented the committee report and</p> <p>22 identified pending problems for the financial</p>	<p style="text-align: right;">518</p> <p>1 (The record was read as</p> <p>2 requested.)</p> <p>3 BY MR. STUEVE:</p> <p>4 Q. Answer my question, please.</p> <p>5 MR. MONICA: Same objection.</p> <p>6 THE WITNESS: I'm not aware of</p> <p>7 this.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Show you what's been marked as</p> <p>10 Exhibit 215. These are the minutes of the</p> <p>11 October 20, 2004 shell egg Marketing Committee.</p> <p>12 Were you shown this document in preparation for</p> <p>13 your deposition today?</p> <p>14 A. No.</p> <p>15 Q. If you would under committee and</p> <p>16 staff about three rows down, it lists you as</p> <p>17 participating; is that correct, sir?</p> <p>18 A. My name's there. Yes.</p> <p>19 Q. And over on the second page, it</p> <p>20 says, recommendation to the Board, down at the</p> <p>21 bottom there. Motion. It was moved by Wicker</p> <p>22 and seconded by Schimpf to recommend to the</p>

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<p style="text-align: right;">519</p> <p>1 Board a plan for hens currently scheduled</p> <p>2 disposal between December 1, 2004, and July 1,</p> <p>3 2005, be disposed of four weeks earlier or</p> <p>4 reduce your flock size by 5 percent. Do you see</p> <p>5 that?</p> <p>6 A. Yes.</p> <p>7 Q. You understand that to be a supply</p> <p>8 and management recommendation; correct, sir?</p> <p>9 MR. MONICA: Objection.</p> <p>10 Mischaracterizes the document.</p> <p>11 THE WITNESS: Would you repeat the</p> <p>12 question?</p> <p>13 (The record was read as</p> <p>14 requested.)</p> <p>15 MR. MONICA: Same objection.</p> <p>16 THE WITNESS: You have to</p> <p>17 rephrase. I don't understand what you're</p> <p>18 asking.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. Sir, you understand what is being</p> <p>21 recommended here by the Marketing Committee,</p> <p>22 which you sat on, is a recommendation for egg</p>	<p style="text-align: right;">521</p> <p>1 break?</p> <p>2 THE WITNESS: Restroom.</p> <p>3 MR. STUEVE: Sure. You need to</p> <p>4 take a break?</p> <p>5 THE WITNESS: Restroom, sure.</p> <p>6 MR. STUEVE: Can we reconvene in</p> <p>7 about five?</p> <p>8 MR. MONICA: Five or ten.</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 10:29 and we are going off the record.</p> <p>11 (A brief recess was taken.)</p> <p>12 THE VIDEOGRAPHER: The time is</p> <p>13 approximately 10:38 a.m. and we are back on the</p> <p>14 record.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. Show you what's been marked as</p> <p>17 Exhibit 119. Did you review this document in</p> <p>18 preparation for your deposition today?</p> <p>19 A. No. I didn't.</p> <p>20 Q. You were designated under 20F to</p> <p>21 testify on behalf of Rose Acre concerning your</p> <p>22 attendance at or participation in any economic</p>
<p style="text-align: right;">520</p> <p>1 producers to reduce the flock size; correct,</p> <p>2 sir?</p> <p>3 A. I see what's written here is what</p> <p>4 I see. I'm not going to interpret it.</p> <p>5 Q. Sir, actually this was, in fact,</p> <p>6 discussed at a committee meeting which you</p> <p>7 participated in; correct?</p> <p>8 A. That's what this says, but I don't</p> <p>9 remember it.</p> <p>10 Q. You don't remember it?</p> <p>11 A. No.</p> <p>12 Q. Counsel for Rose Acre did not show</p> <p>13 you Exhibit 215 in your preparation to testify</p> <p>14 in response to topic 20G on behalf of Rose Acre;</p> <p>15 correct, sir?</p> <p>16 A. Could you repeat that?</p> <p>17 (The record was read as</p> <p>18 requested.)</p> <p>19 THE WITNESS: Correct.</p> <p>20 MR. MONICA: Counsel, do you think</p> <p>21 us showing him a document would have changed his</p> <p>22 recollection? I guess not. Can we take a</p>	<p style="text-align: right;">522</p> <p>1 summit; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And do you recall attending this</p> <p>4 summit?</p> <p>5 A. No. I don't.</p> <p>6 Q. Okay. And Marcus Rust indicated</p> <p>7 that, in fact, you did attend it. Do you have</p> <p>8 any reason to doubt that?</p> <p>9 A. I don't recall attending it.</p> <p>10 Q. Okay. In preparation for response</p> <p>11 to 20F, counsel did not provide you this</p> <p>12 document; is that correct, sir?</p> <p>13 A. That's correct.</p> <p>14 Q. Now, is it your testimony that you</p> <p>15 believe you did not attend this conference?</p> <p>16 A. No. I said I don't remember.</p> <p>17 Q. One way or the other?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Let me show you -- do you</p> <p>20 remember the discussion -- it's over on -- so</p> <p>21 we're looking at Exhibit 119, which is the</p> <p>22 November 16, 2004 egg economic summit</p>

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<p style="text-align: right;">523</p> <p>1 presentation by Gene Gregory, and the numbers --</p> <p>2 the specific page I want you to look at the</p> <p>3 numbers are right up here in the middle so it's</p> <p>4 -- the last two digits is 47.</p> <p>5 A. Okay.</p> <p>6 Q. And do you remember this</p> <p>7 presentation here at all?</p> <p>8 A. I don't remember attending the</p> <p>9 summit. I can't remember this presentation,</p> <p>10 either.</p> <p>11 Q. I'm asking if you would review it</p> <p>12 and see if that refreshes your recollection,</p> <p>13 sir?</p> <p>14 A. No. It doesn't.</p> <p>15 Q. Now, this economic summit was</p> <p>16 conducted in November of 2004 because there was</p> <p>17 a significant concern by egg producers that the</p> <p>18 egg supply was growing too fast and it was</p> <p>19 impacting prices. Do you recall that?</p> <p>20 MR. MONICA: Objection.</p> <p>21 MS. REDDING: Objection.</p> <p>22 THE WITNESS: No. I don't recall</p>	<p style="text-align: right;">525</p> <p>1 back and tell me what you don't understand about</p> <p>2 it.</p> <p>3 (The record was read as</p> <p>4 requested.)</p> <p>5 THE WITNESS: I can't speak to</p> <p>6 that because, quite honestly, I don't recall</p> <p>7 being at the summit.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Sir, if you would underneath, in</p> <p>10 that analysis about four rows down, it compares</p> <p>11 the hen inventory year end '03 to 2004, it shows</p> <p>12 11.6 million increase. Do you see that?</p> <p>13 A. Yes. I see that.</p> <p>14 Q. And then at the bottom, there's a</p> <p>15 comparison of the average October Midwest large</p> <p>16 quote in '03 to '04 and there's a drop in price</p> <p>17 of 42.29 cents; correct?</p> <p>18 A. That's what's written here.</p> <p>19 Q. And then right underneath there,</p> <p>20 he says, do you think we have a problem? Do you</p> <p>21 see that?</p> <p>22 A. Yes. I do.</p>
<p style="text-align: right;">524</p> <p>1 it.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. And, if you would, over on 44?</p> <p>4 A. Okay.</p> <p>5 Q. It says just the facts. If you</p> <p>6 would, if you could review that, and confirm</p> <p>7 that the problem -- do you think we have a</p> <p>8 problem? See that at the bottom, that that</p> <p>9 problem is the growth in the supply of hens?</p> <p>10 MR. MONICA: Objection. Calls for</p> <p>11 speculation. Please review the page and answer</p> <p>12 counsel.</p> <p>13 THE WITNESS: Can you repeat the</p> <p>14 question?</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. Yeah. First of all, does this</p> <p>17 refresh your recollection that the problem that</p> <p>18 was identified by Gene Gregory of UEP to all of</p> <p>19 the egg producers who attended the economic</p> <p>20 summit was the growth in the supply of hens?</p> <p>21 A. I don't understand your question.</p> <p>22 MR. STUEVE: Why don't you read it</p>	<p style="text-align: right;">526</p> <p>1 Q. That doesn't refresh your</p> <p>2 recollection about the problem that was defined</p> <p>3 at that economic summit?</p> <p>4 A. As I stated before, I don't recall</p> <p>5 at all being at the summit.</p> <p>6 Q. This doesn't refresh your</p> <p>7 recollection?</p> <p>8 MR. MONICA: Objection. Asked and</p> <p>9 answered.</p> <p>10 THE WITNESS: I don't recall being</p> <p>11 at the summit.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Marcus Rust was just mistaken when</p> <p>14 he said you were there?</p> <p>15 MR. MONICA: Objection.</p> <p>16 Mischaracterizes Marcus Rust's testimony.</p> <p>17 THE WITNESS: I don't know what</p> <p>18 Marcus Rust said, but I don't recall being at</p> <p>19 this summit.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. Let me show you what's over on --</p> <p>22 over on 48. If you could review the columns</p>

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<p style="text-align: right;">527</p> <p>1 here, first supply result on price during high 2 demand period, the middle column is a million 3 hens over -- or under same period last year, and 4 then supply result on price during low demand. 5 Do you see that? 6 A. Yes. 7 Q. And does that refresh your 8 recollection as to, again, the problem that was 9 being presented at the economic summit in 10 November 2004, which is the negative impact on 11 prices as a result of the growth in the hen 12 population? 13 MR. MONICA: Objection. Compound. 14 Convoluted. Calls for speculation. You can 15 answer. 16 THE WITNESS: As I've stated 17 several times before, I don't recall being at 18 this summit. 19 BY MR. STUEVE: 20 Q. Over on -- over on impact of 21 supply/demand price relationship on 51. Do you 22 see that?</p>	<p style="text-align: right;">529</p> <p>1 (The record was read as 2 requested.) 3 MR. MONICA: Object to the form. 4 You can answer. 5 THE WITNESS: I don't know which 6 Marketing Committee meeting you're referring to. 7 Are you referring to the economic summit? 8 BY MR. STUEVE: 9 Q. No. I'm asking you in this 10 timeframe of the fall of 2004, do you recall 11 this problem with the oversupply of hens being 12 discussed at the Marketing Committee of UEP? 13 MR. MONICA: Object to the form of 14 the question. 15 THE WITNESS: No. I don't recall. 16 BY MR. STUEVE: 17 Q. Now, if you would, over on 52, 18 it's the benefit of producing at 95 percent of 19 capacity. Do you see that? 20 A. Yes. 21 Q. It says, what would be the 22 benefits of reducing the flock size by</p>
<p style="text-align: right;">528</p> <p>1 A. Yes. 2 Q. At the bottom, it states, to meet 3 the demand for 2005 at profitable prices, the 4 industry may need to reduce the projected flock 5 size by 10 million hens. Do you see that? 6 A. Yes. 7 Q. Do you remember that being 8 discussed at the November 2004 economic summit? 9 A. As I've stated several times 10 before, I don't recall being at the 2004 11 economic summit. 12 Q. Do you remember this problem that 13 was being identified here at the summit being 14 discussed at the Marketing Committee of UEP, 15 which you were a member of in November 2004? 16 MR. MONICA: Object to form. 17 THE WITNESS: What meeting? 18 BY MR. STUEVE: 19 Q. Marketing Committee? 20 A. What meeting? 21 MR. STUEVE: If you would read 22 back my question.</p>	<p style="text-align: right;">530</p> <p>1 10 million hens? A 5 percent flock reduction 2 would achieve the 10 million goal. Do you see 3 that statement? 4 A. Yes. I do. 5 Q. And then there is the economic 6 benefit of reducing flock size by 5 percent. 7 That is depicted here on page 52 of Exhibit 115; 8 right, sir? 9 MR. MONICA: Object to the form of 10 the question. 11 THE WITNESS: Could you repeat 12 that, please? 13 (The record was read as 14 requested.) 15 MR. MONICA: Object to the form. 16 THE WITNESS: I still don't 17 understand. Can you read that again, please? 18 (The record was read as 19 requested.) 20 MR. MONICA: Object to the form. 21 THE WITNESS: Since I don't have 22 any recollection of this, I don't have an answer</p>

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33 (Pages 531 to 534)

<p style="text-align: right;">531</p> <p>1 either way on that.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. Sir, it says right above the</p> <p>4 economic benefit analysis, it says, if all</p> <p>5 producers made this adjustment, the 5 percent</p> <p>6 flock reduction, what would be their individual</p> <p>7 benefit; right?</p> <p>8 MR. MONICA: Object to the term</p> <p>9 economic benefit analysis.</p> <p>10 THE WITNESS: Can you state that</p> <p>11 again?</p> <p>12 (The record was read as</p> <p>13 requested.)</p> <p>14 MR. MONICA: Objection. Misstates</p> <p>15 the document. You can answer.</p> <p>16 THE WITNESS: What it states, it</p> <p>17 says if all producers made this adjustment, what</p> <p>18 would be their individual benefit? That's what</p> <p>19 it states right there.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. The adjustment he's referring to</p> <p>22 is the 5 percent flock reduction; is that</p>	<p style="text-align: right;">533</p> <p>1 THE WITNESS: No. I'm not -- I</p> <p>2 was not part of this -- that I'm aware of part</p> <p>3 of this meeting, so anything that's here, I</p> <p>4 don't recall.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. I'm just asking you, sir, you</p> <p>7 understand what's being referenced there under</p> <p>8 stay committed to animal care certified space</p> <p>9 phase-in plan is the cage space reduction</p> <p>10 component of the certified program; correct?</p> <p>11 MR. MONICA: Objection. You may</p> <p>12 answer what your understanding is.</p> <p>13 THE WITNESS: No. As far as</p> <p>14 the -- what was intended or discussed at this</p> <p>15 meeting, I do not recall.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. Sir, do not backfill cages. Do</p> <p>18 you see that?</p> <p>19 A. I see that.</p> <p>20 Q. That's referencing the certified</p> <p>21 program's prohibition on backfilling of cages;</p> <p>22 correct, sir?</p>
<p style="text-align: right;">532</p> <p>1 correct, sir?</p> <p>2 MR. MONICA: Object to the form.</p> <p>3 THE WITNESS: If that's what</p> <p>4 this -- if that's what that was referring to. I</p> <p>5 don't have knowledge of it.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Sir, if you could, over on 53, it</p> <p>8 says management recommendations. Stay committed</p> <p>9 to animal care certified space phase-in plan.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. You understand that to be the</p> <p>13 reduction in cage space under the certified</p> <p>14 program; right?</p> <p>15 MR. MONICA: Objection. Give me a</p> <p>16 chance to object. Object to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: No. I don't.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. You don't know what that means,</p> <p>21 sir?</p> <p>22 MR. MONICA: Same objection.</p>	<p style="text-align: right;">534</p> <p>1 MR. MONICA: Objection. You can</p> <p>2 answer.</p> <p>3 THE WITNESS: It just says do not</p> <p>4 backfill cages. It doesn't reference anything</p> <p>5 else.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Of course, both bullet point 1 and</p> <p>8 bullet point 2, if followed, would reduce the</p> <p>9 supply of hens; correct, sir?</p> <p>10 MR. MONICA: Objection.</p> <p>11 THE WITNESS: No. Not</p> <p>12 necessarily.</p> <p>13 BY MR. STUEVE:</p> <p>14 Q. Bullet point number 3, dispose of</p> <p>15 spent hens at younger ages. That also would</p> <p>16 reduce the flock size; correct, sir?</p> <p>17 MR. MONICA: Object to the form of</p> <p>18 the question. You can answers.</p> <p>19 THE WITNESS: No. There's too</p> <p>20 many other factors. If you're putting in new</p> <p>21 cages and adding birds, not necessarily.</p> <p>22 BY MR. STUEVE:</p>

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<p style="text-align: right;">535</p> <p>1 Q. Did you talk to Marcus Rust about</p> <p>2 Exhibit 115 in preparation for your deposition</p> <p>3 today in response to topics 20F and 20G?</p> <p>4 A. I don't believe I have an</p> <p>5 Exhibit 115.</p> <p>6 Q. Excuse me, 119. Let me rephrase</p> <p>7 that.</p> <p>8 Did you speak with Marcus Rust</p> <p>9 with respect to Exhibit 119 in preparation for</p> <p>10 your deposition on behalf of Rose Acre in</p> <p>11 response to topics 20F and 20G?</p> <p>12 A. No. I did not.</p> <p>13 Q. Sir, let me show you what's been</p> <p>14 marked as Exhibit 251. Did you review this</p> <p>15 document in preparation for your testimony in</p> <p>16 response to topics 20F and 20G?</p> <p>17 A. No. I did not.</p> <p>18 Q. If you would, it's dated</p> <p>19 November 18, 2004, it says, dear -- and then it</p> <p>20 says if you do not read any other mail today</p> <p>21 please take the time to read this. Did I read</p> <p>22 that correctly?</p>	<p style="text-align: right;">537</p> <p>1 you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Does that refresh your</p> <p>4 recollection that you attended that summit?</p> <p>5 A. No.</p> <p>6 Q. Okay. Do you know who Marty</p> <p>7 Eisenstein is?</p> <p>8 A. Yes.</p> <p>9 Q. Who is he?</p> <p>10 A. He's an attorney.</p> <p>11 Q. For who?</p> <p>12 A. For Brann Isaacson.</p> <p>13 Q. Have you met him before?</p> <p>14 A. Yes.</p> <p>15 Q. When did you meet him?</p> <p>16 A. At some UEP meeting.</p> <p>17 Q. Okay. Did the Marketing Committee</p> <p>18 ever meet in person?</p> <p>19 A. Yes.</p> <p>20 Q. And when would it meet in person?</p> <p>21 A. I don't know exactly when.</p> <p>22 Q. Would it meet in person at the</p>
<p style="text-align: right;">536</p> <p>1 A. Yes.</p> <p>2 Q. It says, UEP hosted an egg</p> <p>3 industry economic summit in Atlanta on</p> <p>4 November 16th, and you missed it. Do you see</p> <p>5 that?</p> <p>6 A. Yes.</p> <p>7 Q. Then it goes on to -- I'm</p> <p>8 overwhelmed with the best UEP meeting ever. I</p> <p>9 wish we would have put this one on DVD. Every</p> <p>10 producer should have been there. Every one of</p> <p>11 us should hear it all again and again. Do you</p> <p>12 see that?</p> <p>13 A. Yes.</p> <p>14 Q. And then it -- it has, let us</p> <p>15 share just a few bullet point, highlights of the</p> <p>16 agenda and speakers. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And it states -- bullet point 2,</p> <p>19 Marty Eisenstein from the firm of Brann &</p> <p>20 Isaacson advised the attendees on the</p> <p>21 protections and limitations of the</p> <p>22 Capper-Volstead cooperatives such as UEP. Do</p>	<p style="text-align: right;">538</p> <p>1 annual meeting?</p> <p>2 A. It's possible.</p> <p>3 Q. And the other meetings during the</p> <p>4 year were by phone; is that correct?</p> <p>5 A. Not always, I don't believe.</p> <p>6 Q. So there were other meetings that</p> <p>7 would have been in person other than the annual</p> <p>8 meeting?</p> <p>9 A. I believe so. Yes.</p> <p>10 Q. Okay. And when would those occur,</p> <p>11 those other in person meetings during the year?</p> <p>12 A. I don't remember when.</p> <p>13 Q. Okay. Now, let me ask you.</p> <p>14 It's -- on the bullet point summary of what was</p> <p>15 discussed at the economic summit, November 2004,</p> <p>16 over on -- over on the second page there under</p> <p>17 the last bullet point, it says, UEP presented a</p> <p>18 bleak overview of the supply side of the</p> <p>19 business and the pending problems with an ever</p> <p>20 increasing flock size at a time when demand</p> <p>21 appears to be diminishing. Did I read that</p> <p>22 correctly?</p>

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<p style="text-align: right;">539</p> <p>1 A. Yes.</p> <p>2 Q. Then it goes on, the next</p> <p>3 paragraph says, we then asked the attendees if</p> <p>4 they wanted to be a part of the solution, all in</p> <p>5 bold and in quotes; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. It says, we then asked the</p> <p>8 attendees if they wanted to be part of the</p> <p>9 solution in managing the supply to meet an</p> <p>10 expected demand. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. It says, we offered the two</p> <p>13 options that are now enclosed with this letter.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Now, does that refresh your</p> <p>17 recollection that you attended that meeting?</p> <p>18 A. No. It doesn't.</p> <p>19 Q. And then attached, again to</p> <p>20 Exhibit 251, is -- on the -- on pages 42 and 43</p> <p>21 are two intention forms. Intention to meet</p> <p>22 market needs. It's my company's intention to</p>	<p style="text-align: right;">541</p> <p>1 A. Yes.</p> <p>2 Q. As a member of UEP and an egg</p> <p>3 producer, I fully understand that by making my</p> <p>4 intention known, that UEP will rely on my</p> <p>5 statement. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall receiving that, sir?</p> <p>8 A. No. I do not recall receiving</p> <p>9 that.</p> <p>10 Q. Of course, if the flock reduction</p> <p>11 was reduced by 5 percent, as discussed at the</p> <p>12 November economic summit, that would project to</p> <p>13 approximately 10 million reduction in hens;</p> <p>14 correct?</p> <p>15 MR. MONICA: Objection.</p> <p>16 THE WITNESS: I don't know that.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. That's what was reflected in the</p> <p>19 economic summit presentation we looked at;</p> <p>20 correct, sir?</p> <p>21 MR. MONICA: Objection.</p> <p>22 THE WITNESS: I don't know that to</p>
<p style="text-align: right;">540</p> <p>1 dispose of hens that are currently scheduled for</p> <p>2 disposal between January 1st and April 30, 2005,</p> <p>3 four weeks earlier than previously scheduled.</p> <p>4 Do you see that?</p> <p>5 A. Yes. I do.</p> <p>6 Q. It says as a member of UEP and an</p> <p>7 egg producer, I fully understand by making my</p> <p>8 intention known, that UEP will rely upon my</p> <p>9 statement of intention. Do you see that?</p> <p>10 A. Yes. I do.</p> <p>11 Q. Do you recall receiving this</p> <p>12 document?</p> <p>13 A. No. I don't recall receiving this</p> <p>14 document.</p> <p>15 Q. Then on the second page, it says,</p> <p>16 intention to meet market demand. Option 2. Do</p> <p>17 you see that?</p> <p>18 A. Yes.</p> <p>19 Q. It's my company's intention to</p> <p>20 reduce my own December 1st, 2004, flock size by</p> <p>21 5 percent between the dates of January 1st</p> <p>22 through April 30, 2005. Do you see that?</p>	<p style="text-align: right;">542</p> <p>1 be accurate.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. But that was what was reflected in</p> <p>4 the presentation; correct, sir?</p> <p>5 MR. MONICA: Objection.</p> <p>6 THE WITNESS: If we can go back</p> <p>7 and reread it, if you like?</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Sure. Over on 52?</p> <p>10 A. Yes.</p> <p>11 Q. It says, a 5 percent flock</p> <p>12 reduction would achieve the 10 million goal?</p> <p>13 A. That's correct. That's what that</p> <p>14 says.</p> <p>15 Q. That's in the November 2004</p> <p>16 economic summit presentation marked as</p> <p>17 Exhibit 119; correct, sir?</p> <p>18 A. Correct.</p> <p>19 Q. All right. Show you what's been</p> <p>20 marked as Exhibit 139. This is the UEP Board of</p> <p>21 Director minute meetings for January 25th, 2005;</p> <p>22 is that correct?</p>

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<p style="text-align: right;">543</p> <p>1 A. Yes. That's what's stated.</p> <p>2 Q. So this is approximately</p> <p>3 two months after the November 2004 economic</p> <p>4 summit; is that correct, sir?</p> <p>5 A. That's what's stated here. Yes.</p> <p>6 Q. Now, it indicates about three</p> <p>7 lines down under Board members and staff, Marcus</p> <p>8 Rust was in attendance; is that correct, sir?</p> <p>9 A. That's what's stated here. Yes.</p> <p>10 Q. And then under members and guests</p> <p>11 about six lines down, KY Hendrix and you are</p> <p>12 listed, as well; correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Were you shown Exhibit 139 by Rose</p> <p>15 Acre's counsel in preparation for your testimony</p> <p>16 today in response to topics 20F and 20G?</p> <p>17 A. No.</p> <p>18 Q. It states under the chairman's</p> <p>19 comments, you see down there?</p> <p>20 A. Yes.</p> <p>21 Q. There's -- it says, among the</p> <p>22 comments made by Chairman Deffner were the</p>	<p style="text-align: right;">545</p> <p>1 down the economic summit. The economic summit</p> <p>2 highlighted some of the problems and some of you</p> <p>3 have already reacted in a positive manner. We</p> <p>4 need more of you to participate in a positive</p> <p>5 change. Thanks to those that have prepaid for</p> <p>6 your 2005 dues and assessments. Do you see</p> <p>7 that?</p> <p>8 A. Yes. I do.</p> <p>9 Q. The positive change he's referring</p> <p>10 to was the intention forms that requested UEP</p> <p>11 members to commit to reducing their flock size</p> <p>12 by 5 percent; correct?</p> <p>13 MR. MONICA: Objection. Calls for</p> <p>14 speculation.</p> <p>15 THE WITNESS: I don't know that.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. You don't recall being at that</p> <p>18 January 25, 2005, meeting; is that correct, sir?</p> <p>19 A. That's correct.</p> <p>20 Q. Now, under the Marketing Committee</p> <p>21 report. It's over on the next page, it says,</p> <p>22 Wayne Mooney -- first of all, the Marketing</p>
<p style="text-align: right;">544</p> <p>1 following and then there's a summary there; is</p> <p>2 that correct, sir?</p> <p>3 A. Yes.</p> <p>4 Q. Do you remember Chairman Deffner</p> <p>5 making those statements to you and the other</p> <p>6 participants on the UEP Board of Directors</p> <p>7 meeting of January 25, 2005?</p> <p>8 MR. MONICA: Objection as to</p> <p>9 participant. You can answer the question.</p> <p>10 THE WITNESS: Well, no. I don't</p> <p>11 remember that.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. It says -- he says about halfway</p> <p>14 down, we don't have to accept low prices and we</p> <p>15 can have a good 2005 if we just make a few</p> <p>16 changes and work together. Did I read that</p> <p>17 correctly?</p> <p>18 A. Yes. You did.</p> <p>19 Q. Do you remember him making that</p> <p>20 statement to you in January 2005?</p> <p>21 A. No. I don't.</p> <p>22 Q. And then he references two lines</p>	<p style="text-align: right;">546</p> <p>1 Committee, this is in January 2005. You would</p> <p>2 have been a member of the Marketing Committee;</p> <p>3 correct, sir?</p> <p>4 A. As I stated before, I don't</p> <p>5 remember what years I was a member of the</p> <p>6 committee.</p> <p>7 Q. If the documents indicate, in</p> <p>8 fact, you were, do you have any reason to doubt</p> <p>9 the documents?</p> <p>10 A. If there's documents that states</p> <p>11 that I was there, then I don't have reason to</p> <p>12 doubt the document. No.</p> <p>13 Q. Sir, the sworn interrogatory</p> <p>14 answer of Rose Acre indicates that you were a</p> <p>15 member of the Marketing and Price Discovery</p> <p>16 Committee from 2002 to approximately 2006. Do</p> <p>17 you have any reason to doubt that sworn answer</p> <p>18 by Rose Acre?</p> <p>19 A. By who from Rose Acre?</p> <p>20 Q. It was verified by Joseph A.</p> <p>21 Miller, who is the in-house counsel sitting here</p> <p>22 today?</p>

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<p style="text-align: right;">547</p> <p>1 A. I would have no reason to doubt 2 that then if Joe verified it. 3 Q. This is dated January 2005, which 4 would have been in that timeframe identified by 5 Rose Acre that you were a member of the 6 Marketing Committee; correct, sir? 7 A. Yes. 8 Q. And, in fact, looking at 139, you 9 are listed as a participant in this meeting 10 dated January 25, 2005; right? We just looked 11 at that? 12 A. I was a guest. 13 Q. It says members and guests; right? 14 A. Oh, I'm an UEP member; correct. 15 Q. So Marketing Committee report over 16 on -- that 103 the last three digits, we've 17 established according to Rose Acre's records you 18 were a member; correct? 19 A. Of the Marketing Committee; 20 correct. 21 Q. Now I'm going to direct you to 22 your committee's report, see that at the bottom</p>	<p style="text-align: right;">549</p> <p>1 to. 2 Q. Well, let's pull out the exhibit. 3 It's Exhibit 251. And keep that document in 4 front of you there, sir. Do you see that? Do 5 you have 251 there? 6 A. Yes. 7 Q. And if you would, option 1. Can 8 you find option 1 that was attached there? 9 A. Yes. 10 Q. And then if you could refer then 11 back to 139 under the Marketing Committee 12 report, it says, Mooney reported on the number 13 of companies that have made their intentions 14 known to either sell flocks early, that would be 15 option 1; correct, sir? 16 MR. MONICA: Objection. 17 Mischaracterizes the document. 18 THE WITNESS: But what I'm saying 19 from this, just this paragraph here in the 20 Marketing Committee report, it does not 21 reference when. It does reference companies -- 22 it does say intentions known to either sell</p>
<p style="text-align: right;">548</p> <p>1 of 103? 2 A. Yes. I do. 3 Q. Who was Wayne Mooney? 4 A. Wayne was -- I don't know if he 5 was general manager, but I know he took care of 6 sales for Pilgrim's Pride in Texas. 7 Q. He says Wayne Mooney presented the 8 committee report and then called upon Gene 9 Gregory to review a number of industry 10 statistics. Mooney reported on the number of 11 companies that have made their intentions known 12 to either sell flocks early or reduce their 13 flock size by 5 percent. Do you see that? 14 A. Yes. I do. 15 Q. Those were the two intention form 16 plans that we saw earlier; correct? 17 MS. REDDING: Objection. 18 BY MR. STUEVE: 19 Q. Remember, you could either option 20 1 -- 21 A. By reading just this, it's not -- 22 I'm not exactly sure which forms he's referring</p>	<p style="text-align: right;">550</p> <p>1 flocks early or reduce their flocks by 2 5 percent. But just reading this it doesn't -- 3 it's not referencing this exact -- it's 4 referencing reducing the flocks by 5 percent, 5 but what I'm just stating, it's not saying 6 that -- it's not referencing a date or time of 7 when. 8 BY MR. STUEVE: 9 Q. But you can confirm January 25th 10 would be approximately two months after the 11 November economic summit; right, sir? 12 A. Yes. I can. 13 Q. If you could, just confirm that 14 Mooney reported on the number of companies that 15 have made their intentions known to either sell 16 flocks early, that is what option 1 was 17 identified; right? 18 MR. MONICA: Objection. It's not 19 what it says. 20 THE WITNESS: I'm just saying 21 this -- this paragraph is not referencing any 22 certain document, just the intentions of the</p>

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<p style="text-align: right;">551</p> <p>1 known to either sell flocks, reduce flocks by</p> <p>2 5 percent.</p> <p>3 BY MR. STUEVE:</p> <p>4 Q. Can you confirm for me, sir, that</p> <p>5 option 1 is an intention to sell flocks early?</p> <p>6 A. We're going back to the other</p> <p>7 document?</p> <p>8 Q. Yeah.</p> <p>9 A. In Exhibit 251?</p> <p>10 Q. Uh-huh.</p> <p>11 A. In that exhibit from November 18,</p> <p>12 2004, intention to meet market needs. Option 1.</p> <p>13 Q. And that is an option to sell</p> <p>14 flocks early; correct, sir?</p> <p>15 MR. MONICA: Objection.</p> <p>16 MS. REDDING: Objection.</p> <p>17 THE WITNESS: That option states</p> <p>18 that -- it references just four weeks earlier</p> <p>19 than previously scheduled. Yes.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. So that's a recommendation to sell</p> <p>22 flocks early; correct, sir?</p>	<p style="text-align: right;">553</p> <p>1 to answer it.</p> <p>2 MR. MONICA: Counsel, you keep</p> <p>3 threatening the witnesses. It is inappropriate,</p> <p>4 please don't do it. Let him answer the</p> <p>5 question.</p> <p>6 THE WITNESS: I'm not going to</p> <p>7 draw any conclusions of something that I don't</p> <p>8 have any knowledge about.</p> <p>9 MR. STUEVE: If you could go ahead</p> <p>10 and ask my question.</p> <p>11 (The record was read as</p> <p>12 requested.)</p> <p>13 THE WITNESS: As I stated before,</p> <p>14 I'm not going to draw a conclusion to something</p> <p>15 I'm not aware of.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. And then, sir, option number 2</p> <p>18 that is attached to the November 18th, 2004,</p> <p>19 Exhibit 251, did you find option number 2?</p> <p>20 A. Yes.</p> <p>21 Q. That is requesting that UEP</p> <p>22 members sign their intention to reduce their</p>
<p style="text-align: right;">552</p> <p>1 MR. MONICA: Objection.</p> <p>2 THE WITNESS: We can all read it.</p> <p>3 Like I said, I don't have a recollection of</p> <p>4 being at that meeting so I'm not going to</p> <p>5 discuss a document.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Sir, I'm just asking you to</p> <p>8 confirm what is reflected in intention number</p> <p>9 1 --</p> <p>10 A. I can read it if you like.</p> <p>11 Q. And what it is asking for UEP</p> <p>12 members to commit to is to sell their flocks</p> <p>13 early, as outlined in option number 1; correct,</p> <p>14 sir?</p> <p>15 MR. MONICA: Same objection.</p> <p>16 THE WITNESS: I can read it if you</p> <p>17 like, but I'm not going to draw any conclusions</p> <p>18 from it.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. Sir, I'm going to give you one</p> <p>21 more chance to answer my question, and then</p> <p>22 we'll ask the Court to ask you -- to order you</p>	<p style="text-align: right;">554</p> <p>1 December 1, 2004, flock size by 5 percent;</p> <p>2 right?</p> <p>3 A. I'll state the same as I did</p> <p>4 before. Since I'm not aware of this document,</p> <p>5 then I'm not going to draw conclusions to it.</p> <p>6 Q. And then if you would, if you can</p> <p>7 turn to Exhibit 139 under the Marketing</p> <p>8 Committee report, which you were a member of, it</p> <p>9 says, Mooney reported on the number of companies</p> <p>10 that have made their intentions known to either</p> <p>11 sell flocks early or reduce their flock size by</p> <p>12 5 percent. That's option number 2; correct,</p> <p>13 sir?</p> <p>14 MS. REDDING: Objection. Calls</p> <p>15 for speculation.</p> <p>16 THE WITNESS: As I stated, there's</p> <p>17 nothing that I'm reading here in Exhibit 139</p> <p>18 under the marketing report refers to what</p> <p>19 Mr. Mooney is referring to. No other documents.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. But you can confirm that this</p> <p>22 Marketing Committee report was presented on</p>

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<p style="text-align: right;">555</p> <p>1 January 25, 2005, approximately two months after 2 the intention forms were sent out; correct, sir? 3 MS. REDDING: Objection. 4 THE WITNESS: No, because I'm not 5 aware of the other forms, so I'm not going to 6 speculate that they were sent out. 7 BY MR. STUEVE: 8 Q. Sir, if you would, if you look at 9 251. The date of that is November 18, 2004; 10 right? 11 A. Yes. 12 Q. And attached to it is option 1 and 13 option 2; right? 14 A. Yes. 15 Q. And then Exhibit 159 -- 139 and 16 the committee report that we're referring to is 17 dated approximately two months later, 18 January 25, 2005; correct, sir? 19 A. Correct. 20 Q. All right. And we are reading 21 from the Marketing Committee report on 103. Now 22 I want to direct you to 104. It says this was</p>	<p style="text-align: right;">557</p> <p>1 A. No. I don't remember. 2 Q. Now, again, if you turn back to 3 option number 1, under 251, November 2004, 4 option number 1. It is my company's intention 5 to dispose of hens that are currently scheduled 6 disposal between January 1st and April 30, 2005, 7 four weeks earlier than previously scheduled. 8 Did I read that correctly? 9 A. Yes. 10 Q. And then, if you look at the 11 motion, it's your committee is recommending that 12 that intentions program for flocks to be 13 disposed of four weeks earlier than previously 14 scheduled be extended through Labor Day. 15 They're referring to option number 1 in 251; 16 correct, sir? 17 MS. REDDING: Objection. Calls 18 for speculation. 19 MR. MONICA: I think it 20 mischaracterizes what happened, too, who was 21 voting. 22 THE WITNESS: Yeah. No. I</p>
<p style="text-align: right;">556</p> <p>1 the motion pursuant to the Marketing Committee 2 report. It was moved by Mooney and seconded by 3 Dean to recommend that the current intentions 4 program for flocks to be disposed of four weeks 5 earlier than previously scheduled, and/or flock 6 size reduction by 5 percent be extended through 7 Labor Day. And it was carried. Do you see 8 that? 9 A. Yes. I see that. 10 Q. This is reflected in the meetings 11 minutes in which Marcus Rust, KY Hendrix and you 12 of Rose Acre were present; correct, sir? 13 A. That's what this states, yes. 14 Q. Does that refresh your 15 recollection at all, looking at this document? 16 MR. MONICA: Objection. 17 THE WITNESS: Refresh my 18 recollection of what? 19 BY MR. STUEVE: 20 Q. That you were there and all these 21 things being discussed that we've been 22 reviewing?</p>	<p style="text-align: right;">558</p> <p>1 don't -- it doesn't state that there. No. 2 BY MR. STUEVE: 3 Q. Then it says, or flock size 4 reduction of 5 percent be extended through Labor 5 Day. That would be option number 2, attached to 6 Exhibit 251 being extended through Labor Day; 7 right, sir? 8 MS. REDDING: Objection. 9 THE WITNESS: No. It doesn't 10 state that here. 11 BY MR. STUEVE: 12 Q. What it states is the current 13 intention program for stocks to be disposed of 14 four weeks earlier than previously scheduled, 15 which is reflected in option number 1 be 16 extended through Labor Day, or flock size 17 reduction by 5 percent, which is option number 2 18 be extended through Labor Day, that's what it 19 says; right, sir? 20 MR. MONICA: Objection. That's 21 not what it says. 22 MS. REDDING: Objection.</p>

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40 (Pages 559 to 562)

<p style="text-align: right;">559</p> <p>1 THE WITNESS: No. You said we, 2 and I never said it, and you said it. And you 3 just said in your thing that we said it. And I 4 did not. I stated before that there is nothing 5 in this motion that references that exact 6 document from what I'm reading here. 7 BY MR. STUEVE: 8 Q. This does not refresh your 9 recollection about your attendance at this 10 meeting; is that correct, sir? 11 A. No. It doesn't. 12 Q. Did counsel for Rose Acre give you 13 Exhibit 139 and ask you to discuss it with 14 Marcus Rust and KY Hendrix in preparation for 15 your testimony on behalf of the company in 16 response to 20G or 20F? 17 A. No, sir. 18 Q. Show you what's been previously 19 marked as Exhibit 111 -- actually, I think it's 20 two pages? 21 MR. MONICA: Keep those together. 22 Here's a clip.</p>	<p style="text-align: right;">561</p> <p>1 he said. 2 Q. Starting in '07, according to Rose 3 Acre's records, Marcus Rust began participating 4 in the Marketing Committee. Do you recall that? 5 A. Do you have records from Rose Acre 6 stating that? 7 Q. Yes. Do yo recall that, though? 8 A. I don't remember, no. 9 Q. You don't? 10 A. No. 11 Q. You don't know one way or the 12 other whether or not Marcus Rust participated in 13 the Marketing Committee starting in 2007 and 14 into '08, '09. 15 A. No. I don't remember that. 16 Q. You don't ever recall having 17 discussion with him about him replacing you on 18 the Marketing Committee? 19 A. No. I don't. 20 Q. Why did you stop participating in 21 the Marketing Committee? 22 A. I don't know.</p>
<p style="text-align: right;">560</p> <p>1 BY MR. STUEVE: 2 Q. These are the UEP shell egg 3 Marketing Committee conference call minutes of 4 June 1, 2005; is that correct, sir? 5 A. That's what it states. Yes. 6 Q. And you're identified as 7 participating; is that correct? 8 A. Yes. My name's there. 9 Q. As well as Marcus Rust; right? 10 A. Yes. His name's there. 11 Q. Now, did Marcus Rust ultimately 12 take over your responsibilities on the Marketing 13 Committee? 14 A. Not that I'm aware of. 15 Q. How long -- did you continue to 16 serve on the Marketing Committee in '07 and '08 17 and '09 and 2010? 18 A. I don't remember. If there was -- 19 from what you stated before, that counsel 20 provided -- said I attended from '02 to '06, if 21 Joe stated that in a document from Rose Acre 22 that's all I would know for sure if that's what</p>	<p style="text-align: right;">562</p> <p>1 Q. Did -- in June of 2005, you still 2 would have been a member of the Marketing 3 Committee; right? 4 A. Yes. 5 Q. Was this document, Exhibit 111, 6 shown to you by Rose Acre's counsel in 7 preparation for your testimony on behalf of Rose 8 Acre in response to 20G? 9 A. No. 10 Q. If you would, over on the second 11 page -- actually, before I get there, over on 12 the first page, at the bottom, it says, Paul 13 Osborn suggested that UEP issue an industry egg 14 economic alert in which information on price 15 forecasts, along with possible solutions to the 16 economic problem could be communicated. Do you 17 see that? 18 A. Yes. I do. 19 Q. Do you remember that being 20 discussed at that June 2005 meeting, sir? 21 A. No. I don't. 22 Q. Over on the next page, it says,</p>

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<p style="text-align: right;">563</p> <p>1 under motion, it was moved by Osborn and 2 seconded by Schimpf that UEP distribute an 3 economic alert to the members and that the alert 4 include a price forecast and a list of possible 5 options to correct the oversupply problem. 6 Carried. Do you see that? 7 A. Yes. I do. 8 Q. Do you remember participating in 9 that meeting and the recommendation being 10 approved that UEP distribute an economic alert 11 to the members, and that it would include a 12 price forecast and a list of possible options to 13 correct the oversupply problem? 14 A. No. I don't remember that. 15 Q. And this doesn't refresh your 16 recollection? 17 A. No. It doesn't. 18 Q. You did not discuss Exhibit 111 19 with Marcus Rust in preparation for your 20 testimony today in response to topic 20G on 21 behalf of Rose Acre; is that correct, sir? 22 A. That's correct.</p>	<p style="text-align: right;">565</p> <p>1 Q. Under the Marketing Committee 2 minutes of March 31, 2006, about two-thirds 3 down, it says motion. It was moved by Baker and 4 seconded by Schimpf to recommend to the members 5 a program calling for the flocks to be molted 6 six weeks earlier than previously scheduled and 7 dispose of spent hens six weeks earlier than 8 previously scheduled. Did I read the motion 9 correctly? 10 A. Yes. You did. 11 Q. It indicates the motion passed 12 unanimously; is that right, sir? 13 A. That's what's stated here. 14 Q. You understand that the purpose of 15 that motion was to reduce the supply of hens in 16 order to reduce the supply of eggs and boost egg 17 prices; correct, sir? 18 MR. MONICA: Objection. Calls for 19 speculation. You can answer. 20 THE WITNESS: I'm not going to 21 draw conclusions on something I wasn't a part 22 of.</p>
<p style="text-align: right;">564</p> <p>1 MR. MONICA: I'm just going to put 2 a continuing objection on the record. If you 3 look at the Notice, counsel, it says that Marcus 4 Rust was designated for topics 20D and E, which 5 are participation and attendance at meetings. 6 You've had him for two days. You asked him 7 questions about these. This witness is not 8 designated on these topics. You know that. 9 BY MR. STUEVE: 10 Q. Show you what's been marked as 11 Exhibit 170. This is the Marketing Committee 12 minutes, March 31st, 2006, and identifies Marcus 13 Rust. Do you see that? 14 A. Yes. 15 Q. Was this document, Exhibit 170, 16 provided to you by counsel in preparation for 17 your testimony today in response to 20G? 18 A. No. 19 Q. Did you meet with Marcus Rust and 20 discuss Exhibit 170 in preparation for your 21 response to 20G? 22 A. No.</p>	<p style="text-align: right;">566</p> <p>1 BY MR. STUEVE: 2 Q. Do you remember ever discussing 3 the contents of this motion with Marcus Rust? 4 A. Not this specific motion, but the 5 topic, Rose Acre has a firm policy that we do 6 not molt flocks early and restrict flocks 7 because we can't because our birds, we have our 8 own hatcheries and breeder farms. In our 9 production system, we couldn't adhere to 10 changing our schedules because we have to plan 11 everything 18 months in advance on our flock 12 placements. So if we were to try to -- if we 13 actually participated or did something like 14 this, it would throw off our entire flock 15 program schedule. We are different than a lot 16 of producers, since we have our own breeder 17 farms. It's not very common at all in the 18 industry to have your own birds. So it would 19 never work for our company. 20 MR. STUEVE: I move to strike the 21 answer as nonresponsive, and ask if you could 22 read back my question.</p>

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42 (Pages 567 to 570)

<p style="text-align: right;">567</p> <p>1 MR. MONICA: I object to your 2 motion to strike. Please read the answer back 3 as well as the question. 4 MR. STUEVE: I don't want the 5 answer read back. I want my question asked 6 again. 7 MR. MONICA: Well, I want to hear 8 the answer to your question. If you want to ask 9 your question, go ahead. 10 BY MR. STUEVE: 11 Q. I'll ask it again. 12 Sir, did you discuss the contents 13 of this motion that is reflected in March 31st, 14 2006, with Marcus Rust? 15 A. As I stated before, not this 16 specific motion, but this topic of moulting and 17 selling out hens early, as I stated, would not 18 work for our company because we have a strict 19 company policy, we can't do that because of our 20 system. We have our own breeder farms, our own 21 hatcheries, so with us producing our own birds, 22 we could not do something like this. As a</p>	<p style="text-align: right;">569</p> <p>1 THE WITNESS: I cannot speak to 2 this. I was not part of this. 3 BY MR. STUEVE: 4 Q. Would you have an understanding as 5 to why the Marketing Committee would have 6 recommended that the members, the UEP members 7 molt six weeks earlier their flocks than 8 previously scheduled, and dispose of spent hens 9 six weeks earlier than previously scheduled? 10 A. No. I'm not going to speculate on 11 what this was. 12 Q. And then in the -- also what's 13 reflected in Exhibit 170 is Gregory announced 14 that he would send out a supply demand alert to 15 the industry as quickly as possible? 16 MR. MONICA: On the second page. 17 THE WITNESS: That's what's stated 18 there. 19 BY MR. STUEVE: 20 Q. Do you remember that economic -- 21 the supply demand alert being sent out by UEP, 22 sir?</p>
<p style="text-align: right;">568</p> <p>1 company, we don't. 2 Q. Sir, the motion indicates it was 3 passed unanimously; is that correct, sir? 4 A. That's what's stated here. 5 Q. Marcus Rust is identified as a 6 participant in the meeting? 7 A. His name is on this paper. Yes. 8 Q. And if egg producers -- let me 9 back up. Even if Rose Acre did not participate 10 in this, if there were enough egg producers that 11 did, this would reduce the supply of hens; 12 correct, sir? 13 MR. MONICA: Objection. 14 THE WITNESS: No. Not 15 necessarily. You don't know how many people 16 adding houses, it happens all the time, we're 17 building chicken houses. 18 BY MR. STUEVE: 19 Q. So this was just passed for grins 20 by the Marketing Committee? 21 MR. MONICA: Objection. You're 22 taunting the witness. Please don't do it.</p>	<p style="text-align: right;">570</p> <p>1 A. No. I don't recall that. 2 Q. Let me show you what's been marked 3 as Exhibit 531. This is a document that is -- 4 if you look at the bottom produced by Rose Acre. 5 See here it says RAFKS 0004654. Do you see 6 that? 7 A. Yes. 8 Q. And it says right at the top, from 9 Chad Gregory, UEP, it should come as no surprise 10 to any of you that UEP will not have a Marketing 11 Committee in 2010, nor the foreseeable future. 12 Do you see that? 13 A. Yes. I do. 14 Q. Were you aware that after UEP and 15 Rose Acre and other members of UEP were sued 16 that UEP disbanded the Marketing Committee? 17 A. No. I don't remember when that 18 happened. 19 Q. You were aware, though, it was 20 disbanded, sir? 21 A. I'm aware today that there is not 22 a Marketing Committee.</p>

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<p style="text-align: right;">571</p> <p>1 Q. When did you learn that, sir?</p> <p>2 A. I don't remember.</p> <p>3 Q. Sir, if you could, turn to 24 in</p> <p>4 517. It's the -- it's my understanding you've</p> <p>5 been designated on behalf of Rose Acre to</p> <p>6 testify about topics L and M. Can you find L</p> <p>7 and M there?</p> <p>8 A. Yes.</p> <p>9 Q. Is that your understanding?</p> <p>10 A. Yes.</p> <p>11 Q. So 24L states, the impact of the</p> <p>12 animal care certified program and the UEP</p> <p>13 certified program on the supply of eggs and egg</p> <p>14 products. Do you see that?</p> <p>15 A. Yes. I do.</p> <p>16 Q. What did you do in preparation to</p> <p>17 testify on behalf of Rose Acre in response to</p> <p>18 24L?</p> <p>19 A. On L, I -- from Rose Acres I</p> <p>20 really can't draw a conclusion to what the</p> <p>21 impact is. I think you would require an</p> <p>22 economist to tell you that.</p>	<p style="text-align: right;">573</p> <p>1 motion to strike. Please read back the answer,</p> <p>2 as well.</p> <p>3 (The record was read as</p> <p>4 requested.)</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. Let me make sure you understand my</p> <p>7 question.</p> <p>8 Did you, in preparation for 24L,</p> <p>9 attempt to go back through the records of and</p> <p>10 documents of Rose Acre to determine what impact,</p> <p>11 if any, the animal care certified program had on</p> <p>12 the flock size of Rose Acre?</p> <p>13 MR. MONICA: Counsel, he just told</p> <p>14 you he knows the answer to that. Why don't you</p> <p>15 ask him.</p> <p>16 THE WITNESS: Yeah. Like I --</p> <p>17 MR. STUEVE: Hold on just a</p> <p>18 second. I'm going to ask that Mr. Monica not</p> <p>19 instruct the witness how to answer. Read back</p> <p>20 my question and I would ask for you to answer</p> <p>21 it, sir.</p> <p>22 MR. MONICA: You're trying to</p>
<p style="text-align: right;">572</p> <p>1 Q. Did you attempt to determine the</p> <p>2 impact of the animal care certified program on</p> <p>3 the -- Rose Acre's flock size?</p> <p>4 MR. MONICA: Objection. That's</p> <p>5 not what that asks.</p> <p>6 THE WITNESS: Could you repeat</p> <p>7 that?</p> <p>8 (The record was read as</p> <p>9 requested.)</p> <p>10 MR. MONICA: Same objection. You</p> <p>11 can answer.</p> <p>12 THE WITNESS: For Rose Acres, on</p> <p>13 our flock size, it really had no impact because</p> <p>14 we -- during -- since the program's -- even</p> <p>15 prior to the program's inception, and through</p> <p>16 today, I can't remember no time in our history</p> <p>17 that we haven't been building chicken houses.</p> <p>18 MR. STUEVE: Move to strike the</p> <p>19 answer as nonresponsive. I would ask you to</p> <p>20 read back the question and ask you to answer it</p> <p>21 for me, sir.</p> <p>22 MR. MONICA: I object to the</p>	<p style="text-align: right;">574</p> <p>1 trick him. You've harassed him, belittled him.</p> <p>2 Now you're trying to trick him. I ask you to</p> <p>3 stop doing it. Just ask the question.</p> <p>4 MR. STUEVE: We'll let the jury</p> <p>5 decide whether we're trying to trick him.</p> <p>6 MR. MONICA: I'm sure they will.</p> <p>7 MR. STUEVE: A rude awakening</p> <p>8 here.</p> <p>9 MR. MONICA: For your side.</p> <p>10 MR. STUEVE: We'll see.</p> <p>11 MR. MONICA: You will.</p> <p>12 MR. STUEVE: Looking forward to</p> <p>13 it.</p> <p>14 (The record was read as</p> <p>15 requested.)</p> <p>16 MR. MONICA: Object to the form.</p> <p>17 You can answer.</p> <p>18 THE WITNESS: As I previously</p> <p>19 stated, that Rose Acres, prior to, during, and</p> <p>20 even through today, Rose Acres I can't remember</p> <p>21 any time in the history since 1980 since I've</p> <p>22 been a part of Rose Acres that we have not been</p>

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44 (Pages 575 to 578)

<p style="text-align: right;">575</p> <p>1 building chicken houses. So our flock size was 2 not impacted by this program. That's my answer. 3 BY MR. STUEVE: 4 Q. I'm going to give you one more 5 chance to answer it, then we'll bring it back to 6 the Court. Read it back and ask you to answer 7 it? 8 A. I've answered it twice. 9 Q. I'll give you one more chance. 10 A. Why? I've answered it twice. 11 Q. You have to answer it one more 12 time. 13 Okay. I'll give you my same 14 answer. 15 MR. MONICA: We object. You're 16 harassing -- you continue to harass the witness. 17 Repeat the same question. 18 THE WITNESS: You'll get my same 19 answer, you can ask me a hundred times. I'll 20 give you the same answer. 21 MR. STUEVE: I'm going to ask you 22 one more time.</p>	<p style="text-align: right;">577</p> <p>1 company, we have continued -- no time during 2 that period have we not been building chicken 3 houses, so the program did not have an impact on 4 our flock size. 5 MR. STUEVE: I'm going to certify 6 that question as not responsive. 7 MR. MONICA: We would like to take 8 a break for a couple minutes. 9 MR. STUEVE: No. It's not -- I'm 10 not done with my line of questioning. 11 MR. MONICA: Counsel, you said at 12 the beginning, he can take a break -- 13 THE WITNESS: I have to go to the 14 restroom. 15 MR. MONICA: We want a break. 16 Thank you. 17 MR. STUEVE: I want the record to 18 reflect, counsel is the one broke off, not the 19 witness. I did tell the witness he could let me 20 know when he wanted to take a break. 21 MR. MONICA: Sir, do you want to 22 take a break?</p>
<p style="text-align: right;">576</p> <p>1 THE WITNESS: Okay. Just one 2 more? 3 BY MR. STUEVE: 4 Q. Yeah. Then we'll get the judge 5 involved and have him review the transcript. 6 A. All right. Good. 7 MR. MONICA: Counsel, you are 8 continuing to harass the witness. The video is 9 going to show it, the transcript is going to 10 show it. I ask you for the fifth time to stop 11 doing it. You are agitating the witness on 12 purpose. Please go ahead read it back. Greg, 13 answer it again. 14 THE WITNESS: I will. 15 (The record was read as 16 requested.) 17 MR. MONICA: Same objection. 18 Please answer. 19 THE WITNESS: As I've stated twice 20 previously, Rose Acre Farms, before the 21 certified program and as early as my 22 recollection, 1980 when I began with the</p>	<p style="text-align: right;">578</p> <p>1 THE WITNESS: I need to go to the 2 restroom. 3 THE VIDEOGRAPHER: The time is 4 11:42 a.m. We are going off the record. 5 (A brief recess was taken.) 6 THE VIDEOGRAPHER: This is the 7 start of media unit number four. We're back on 8 the record at 11:50 a.m. 9 BY MR. STUEVE: 10 Q. Sir, did you discuss your 11 testimony with Molly Crabtree, counsel for Rose 12 Acre during this break? 13 A. No. 14 Q. Okay. Let me show you what's been 15 marked as Exhibit 575? 16 (Exhibit Number 575 was marked for 17 identification.) 18 BY MR. STUEVE: 19 Q. And this is Bates range RA 0071932 20 to 33. Did you review this, the document, in 21 preparation for your deposition today? 22 A. No.</p>

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45 (Pages 579 to 582)

<p style="text-align: right;">579</p> <p>1 Q. If you could, you could look down 2 on the bottom of the first page of 575, it's 3 from James Rust to Marcus Rust dated June 15, 4 2008. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. That would be approximately six 7 years after Rose Acre would have been a part of 8 the UEP certified program; is that right, sir?</p> <p>9 A. Correct.</p> <p>10 Q. And it says, I disagree adding to 11 existing farms only makes them more efficient. 12 Do you see that line?</p> <p>13 A. Yes.</p> <p>14 Q. Then the next one down. Since we 15 lost so much capacity due to animal care, 16 building houses at those farms -- excuse me, let 17 me reread that.</p> <p>18 Since we lost so much capacity due 19 to animal care. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Building houses at those farms is 22 a must, just to hold our own. Do you see that?</p>	<p style="text-align: right;">581</p> <p>1 presidents under our old structure. And then 2 Lois Rust was president and chairman of the 3 Board.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. My question is again, was there 6 anybody above Marcus Rust before Lois Rust?</p> <p>7 A. Not above. No, sir.</p> <p>8 Q. Okay. Now, James Rust's statement 9 that since we lost so much capacity due to 10 animal care. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. This document was not provided to 13 you by counsel for Rose Acre; is that correct, 14 sir?</p> <p>15 A. That's correct.</p> <p>16 Q. And you did not review it in 17 preparation for your testimony on behalf of Rose 18 Acre in response to 24L; is that correct, sir?</p> <p>19 A. That's correct.</p> <p>20 Q. All right. Show you what's been 21 marked as Exhibit 554. If you look at the 22 bottom, this is a document produced by Rose</p>
<p style="text-align: right;">580</p> <p>1 A. Yes.</p> <p>2 Q. This document which is between 3 James Rust -- he's a Board member; right, sir?</p> <p>4 A. Yes. He is.</p> <p>5 Q. To Marcus Rust, who is a Board 6 member and also running the company with his 7 mother at this time; is that right?</p> <p>8 MR. MONICA: Objection.</p> <p>9 THE WITNESS: I'm fine with 10 running the company, but Marcus Rust was 11 vice-president of -- he was executive 12 vice-president of sales and construction.</p> <p>13 BY MR. STUEVE:</p> <p>14 Q. Was there anybody above him, 15 besides his mother?</p> <p>16 MR. MONICA: Objection.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. At this time?</p> <p>19 MR. MONICA: Objection.</p> <p>20 THE WITNESS: As far as -- at that 21 time we had several executive vice presidents. 22 Marcus was one of several executive vice</p>	<p style="text-align: right;">582</p> <p>1 Acre. It's previously been marked.</p> <p>2 If you look -- first of all, was 3 this document shown to you by Rose Acre's 4 counsel in preparation for your deposition 5 today?</p> <p>6 A. No, sir.</p> <p>7 Q. If you go on down to the bottom 8 half. It -- starting with the line that says, 9 on Tuesday, June 21, 2011. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And this is at 9:50 a.m. in the 12 morning, Marcus Rust. Do you see that reference 13 there?</p> <p>14 A. Yes.</p> <p>15 Q. All right. And this is an e-mail 16 from Marcus Rust to Ruth Ann Hendrix, if you 17 look over on the next page, you'll see her 18 initial e-mail; is that correct?</p> <p>19 A. From Ruth Ann to Marcus.</p> <p>20 Q. Right. Right above that which is 21 the portion I'm going to be reviewing with you 22 is Marcus's e-mail back to Ruth Ann. Is that</p>

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46 (Pages 583 to 586)

<p style="text-align: right;">583</p> <p>1 correct, sir?</p> <p>2 MR. MONICA: Objection.</p> <p>3 THE WITNESS: I'll have to read it</p> <p>4 because it doesn't -- in the document, it</p> <p>5 doesn't state who Marcus wrote it to, unless</p> <p>6 it's mentioned in here. I can read it and see.</p> <p>7 BY MR. STUEVE:</p> <p>8 Q. If you look at the e-mail string,</p> <p>9 the string starts with -- this is the form it</p> <p>10 was produced to us. It starts with an e-mail</p> <p>11 from Ruth Ann to Marcus; right?</p> <p>12 A. Yes. It does.</p> <p>13 Q. Dated June 21, 2011, at 8:22?</p> <p>14 A. That's what's stated here. Yes.</p> <p>15 Q. On June 21, 2011, same day,</p> <p>16 approximately a little over an hour later, it</p> <p>17 appears that Marcus Rust is responding to that</p> <p>18 e-mail; is that fair to say?</p> <p>19 A. If I can read it, I can see.</p> <p>20 Q. Sure.</p> <p>21 A. Sorry.</p> <p>22 Q. Actually, I can shortcut this. If</p>	<p style="text-align: right;">585</p> <p>1 referring to there, sir, is the animal care</p> <p>2 certified program's cage space requirements;</p> <p>3 correct?</p> <p>4 MR. MONICA: Object to form.</p> <p>5 THE WITNESS: I can't draw a</p> <p>6 conclusion what Marcus is referring to.</p> <p>7 BY MR. STUEVE:</p> <p>8 Q. You did not discuss this statement</p> <p>9 in Exhibit 554 with Marcus Rust in preparation</p> <p>10 for your testimony in response to 24L; is that</p> <p>11 correct, sir?</p> <p>12 A. That is correct.</p> <p>13 Q. Are you aware of any other cage</p> <p>14 space increase program that Rose Acre was</p> <p>15 involved in other than the UEP certified</p> <p>16 program?</p> <p>17 MS. REDDING: Objection.</p> <p>18 MR. MONICA: I join the objection.</p> <p>19 You can answer.</p> <p>20 THE WITNESS: Repeat the question,</p> <p>21 please.</p> <p>22 BY MR. STUEVE:</p>
<p style="text-align: right;">584</p> <p>1 you look right above on the first page?</p> <p>2 A. Okay.</p> <p>3 Q. It says, dear Marcus, thanks for</p> <p>4 taking time to respond. That's from Ruth Ann</p> <p>5 back to Marcus?</p> <p>6 A. Okay. Let me see. I just want to</p> <p>7 make sure that I understand it, if I'm going to</p> <p>8 agree to what you're saying. It appears that</p> <p>9 that is Marcus's response, based on -- they</p> <p>10 reference the Ohio Farm Bureau.</p> <p>11 Q. About halfway down in that</p> <p>12 response prepared by Marcus Rust on June 21,</p> <p>13 2011, it states, starting with, did you know.</p> <p>14 Do you see that, it's right after the HUS</p> <p>15 question mark. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Marcus Rust states, did you know</p> <p>18 we reduced the output potential of our farms by</p> <p>19 25 to 30 percent with the cage space increase to</p> <p>20 try and make a viable program. Do you see that?</p> <p>21 A. Yes. I do.</p> <p>22 Q. The cage space increase he's</p>	<p style="text-align: right;">586</p> <p>1 Q. Let me restate it. Are you</p> <p>2 aware -- we've been looking at Marcus Rust's</p> <p>3 statement on June 21, 2011, that we reduced the</p> <p>4 output potential of our farms by 25 to</p> <p>5 30 percent with the cage space increase. We've</p> <p>6 been looking at that statement; correct?</p> <p>7 A. Yes.</p> <p>8 Q. Are you aware of any other</p> <p>9 program, other than the animal care certified</p> <p>10 program that Rose Acre was participating in that</p> <p>11 had a cage space increase requirement?</p> <p>12 MR. MONICA: Object to the form of</p> <p>13 the question. You can answer.</p> <p>14 THE WITNESS: Not that I recall.</p> <p>15 No.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. Show you what's been marked as</p> <p>18 Exhibit 567. Did Rose Acre's counsel give you</p> <p>19 this document in preparation for your deposition</p> <p>20 today?</p> <p>21 A. No, sir.</p> <p>22 Q. If you would, on the first page of</p>

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47 (Pages 587 to 590)

<p style="text-align: right;">587</p> <p>1 567, it's an e-mail from Joe Miller, who is the 2 general counsel for Rose Acre; correct? 3 A. Correct. 4 Q. Who's present at your deposition 5 today; right? 6 A. Correct. 7 Q. It's to Gene Gregory of United 8 Egg, which would be UEP; correct? 9 A. Well, United Egg and UEP are 10 separate. 11 Q. Okay. But Gene Gregory is the 12 person who in 2007 would have had a leadership 13 role with United Egg Producers; correct? 14 A. That is correct. 15 Q. And Joe copies Marcus Rust and you 16 on this; right? 17 A. Yes. 18 Q. And do you recall getting a copy 19 of this letter to the USDA concerning shield? 20 MR. MONICA: Sorry. I lost track. 21 Is there a question pending? 22 THE WITNESS: Can you repeat the</p>	<p style="text-align: right;">589</p> <p>1 I would have to read more of the contents but I 2 have a vague recollection of receiving this 3 e-mail. Yes. 4 Q. And not only were you copied but 5 Marcus Rust was copied, as well; correct? 6 A. Yes. 7 Q. And this was actually sent by -- 8 the e-mail was sent by Joe Miller, who is the 9 author of the letter; right? 10 A. That's what's stated here. Yes. 11 Q. All right. And it lists 12 Mr. Miller as the general counsel of Rose Acre 13 Farms; right? 14 A. Yes. It does. 15 Q. You would expect a letter that was 16 prepared by the general counsel of Rose Acre to 17 be accurate; correct, sir? 18 A. I guess -- repeat the question, 19 please. 20 (The record was read as 21 requested.) 22 THE WITNESS: I guess I don't</p>
<p style="text-align: right;">588</p> <p>1 question? 2 (The record was read as 3 requested.) 4 BY MR. STUEVE: 5 Q. If you look up at the subject line 6 of the e-mail that you're copied on, it says 7 letter to USDA concerning shield; is that 8 correct? 9 A. Yes. 10 Q. All right. Do you recall 11 receiving this letter to the USDA that was 12 attached? 13 A. I vaguely -- I have a vague 14 recollection of this e-mail, but I would never 15 have remembered it without looking at it. 16 Q. Okay. 17 A. Once I looked at it, I kind of 18 remember it. Yes. 19 Q. Okay. So you do remember 20 reviewing this at the time you would have 21 received it in August of 2007; is that correct? 22 A. Like I said, looking it over, and</p>	<p style="text-align: right;">590</p> <p>1 understand what you mean by accurate. What -- I 2 guess I'm not sure what you're referring to. 3 BY MR. STUEVE: 4 Q. That the statements that would be 5 made in the letter on behalf of Rose Acre by 6 their general counsel, that those statements 7 would be accurate; correct? That's what you 8 would expect? 9 A. Our legal counsel -- as general 10 counsel for Rose Acres, Joe Miller is -- does 11 give opinions to management of Rose Acres, is 12 what he does. Now, to state whether what Joe 13 states is accurate, I guess I'm just -- I'm a 14 little vague on what you're asking. 15 Q. I'll ask it one more time. 16 You would expect that the 17 statements in a letter prepared by the general 18 counsel of Rose Acre to the USDA would be 19 accurate statements; correct, sir? 20 A. Without talking about specific 21 statements that are accurate, I guess -- I just 22 don't want to in general agree to that. No.</p>

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48 (Pages 591 to 594)

<p style="text-align: right;">591</p> <p>1 Q. Well, you consider him a</p> <p>2 trustworthy person; is that right?</p> <p>3 A. Yes. I do.</p> <p>4 Q. And he speaks publicly on occasion</p> <p>5 on behalf of Rose Acre; correct?</p> <p>6 A. Yes.</p> <p>7 Q. For example, when the Humane</p> <p>8 Society issued a videotape of Rose Acre's</p> <p>9 facilities, he was the person who spoke on</p> <p>10 behalf of Rose Acre to the press; correct, sir?</p> <p>11 A. I don't recall that for sure. No.</p> <p>12 I remember Victor Rigterink was involved in</p> <p>13 that.</p> <p>14 Q. You don't recall Mr. Miller</p> <p>15 issuing a statement on behalf of Rose Acre?</p> <p>16 A. No. I don't recall that.</p> <p>17 Q. Sir, the letter that's attached</p> <p>18 that you were copied on, it states in the second</p> <p>19 paragraph there, Rose Acre Farms is one of the</p> <p>20 largest egg producers in the US. See that</p> <p>21 statement. Second paragraph?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">593</p> <p>1 referring to the UEP certified egg program;</p> <p>2 correct, sir?</p> <p>3 MR. MONICA: Objection.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. He states, in order to comply with</p> <p>7 these requirements, Rose Acre Farms reduced the</p> <p>8 number of birds per cage, which has amounted to</p> <p>9 a reduction of literally millions of birds from</p> <p>10 our operation. Did I read that accurately, sir?</p> <p>11 A. Yes.</p> <p>12 Q. We did this because it was the</p> <p>13 right thing to do. Did I read that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. Now, at the time you received and</p> <p>16 reviewed this letter, did you contact Mr. Miller</p> <p>17 and indicate to him that there are any</p> <p>18 inaccurate statements in this letter?</p> <p>19 A. I don't remember my discussions</p> <p>20 with Mr. Miller in regards to this statement.</p> <p>21 Q. All right. Now, did counsel for</p> <p>22 Rose Acre show you this document in preparation</p>
<p style="text-align: right;">592</p> <p>1 Q. That's an accurate statement;</p> <p>2 right?</p> <p>3 A. Yes, it is.</p> <p>4 Q. We have also been very committed</p> <p>5 to the UEP certified program. That's an</p> <p>6 accurate statement; correct, sir?</p> <p>7 A. Yes.</p> <p>8 Q. This commitment has come at a</p> <p>9 great deal of expense and work on our part. Is</p> <p>10 that an accurate statement, sir?</p> <p>11 A. Yes.</p> <p>12 Q. And then if you would, he states</p> <p>13 in the next sentence how the program was</p> <p>14 developed. Is that consistent with your</p> <p>15 understanding, sir?</p> <p>16 MR. MONICA: Objection. Vague.</p> <p>17 THE WITNESS: Yes. The -- it's my</p> <p>18 understanding -- yes. The Scientific Committee</p> <p>19 developed the guidelines; correct.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. In the next statement, he states,</p> <p>22 in order to comply with these requirements, he's</p>	<p style="text-align: right;">594</p> <p>1 for your testimony in response to topics 20G and</p> <p>2 24L?</p> <p>3 A. No, sir.</p> <p>4 Q. Show you what's been marked as</p> <p>5 Exhibit 108.</p> <p>6 MR. MONICA: Don't look at it</p> <p>7 until I've seen it, please. Go ahead and look</p> <p>8 at it.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. Sir, did counsel for Rose Acre</p> <p>11 provide you this document in response to -- in</p> <p>12 preparation for your testimony on behalf of Rose</p> <p>13 Acre in response to 20G?</p> <p>14 A. No, sir.</p> <p>15 Q. And if you would, on the second</p> <p>16 page of Exhibit 108 -- well, first of all, on</p> <p>17 the first page, it's dated March 29, 2002. That</p> <p>18 would have been right at the beginning of when</p> <p>19 UEP joined -- excuse me. When Rose Acre joined</p> <p>20 UEP; is that correct, sir?</p> <p>21 A. Yes.</p> <p>22 Q. And over on the second page, it</p>

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<p style="text-align: right;">595</p> <p>1 discusses a Producer Committee for animal 2 welfare and it has both you and Marcus Rust 3 listed as participating; is that right, sir? 4 A. Yes. 5 Q. And in reviewing this document, 6 does that refresh your recollection that you 7 attended that meeting? 8 A. No. It doesn't. 9 Q. If you would, over on 912, it 10 says -- right at the top, it says, motion was 11 moved by Thompson and seconded by Arias to 12 recommend to the Board a requirement for a grade 13 of 85 percent would be required to pass the 14 audit. Motion carried by vote 8 to 3. Do you 15 see that? 16 A. Yes. I do. 17 Q. Do you recall that vote being 18 taken? 19 A. No. I don't. 20 Q. All right. About the fifth one 21 down, it says, it was moved by Arias and 22 seconded by Behan to recommend that 50 points of</p>	<p style="text-align: right;">597</p> <p>1 folks, including yourself; right? 2 A. Yes. 3 Q. KY Hendrix also of Rose Acre? 4 A. Correct. 5 Q. And it says, please find attached 6 minutes from both the Producer Committee for 7 animal welfare and price discovery for certified 8 egg meetings. Please review these and let me 9 know if any corrections are needed. Do you 10 remember receiving Exhibit 108, sir? 11 A. No. I don't. 12 Q. And reviewing it now doesn't 13 refresh your recollection at all; is that 14 correct? 15 A. That's correct. 16 Q. Now, if you would, if you look 17 over on the Bates 915 at the bottom there of 18 Exhibit 108, this is the minutes of the price 19 discovery meeting that you were provided a copy 20 of; is that right? 21 A. You mean -- 22 Q. On 915, the price discovery for</p>
<p style="text-align: right;">596</p> <p>1 the 110 in the housing and space allowance be 2 assigned to the space allowance and all other 3 line items be assigned 5 points. Do you see 4 that? 5 A. Yes. I do. 6 Q. Do you recall that motion being 7 voted on? 8 A. No. I don't. 9 Q. Do you recall that the only 10 requirement of the animal care certified program 11 that would result in a failure of the audit is 12 the cage space allowance requirement? 13 MR. MONICA: Object to the form. 14 THE WITNESS: No. I'm not. 15 BY MR. STUEVE: 16 Q. Is this the first time you heard 17 of that today, sir? 18 A. I don't remember. I read the 19 requirements. I just can't recall them. 20 Q. Now, also attached to Exhibit 108, 21 and just to go back to the first page of 108, 22 this is from Gene, and then it's to several</p>	<p style="text-align: right;">598</p> <p>1 certified egg minutes. Do you see that? 2 A. Yes. I do. 3 Q. This was attached to the 4 communication you would have received from Gene 5 Gregory of United Egg Producers; right? 6 A. That's what it says. Yes. 7 Q. Okay. Under the motion for the 8 price discovery, it says, it was moved by Fortin 9 and seconded by Deffner to recommend to the 10 Board that no more eggs may be marketed as 11 certified than those produced by the certified 12 company or purchased from other certified 13 companies. Do you see that? 14 A. Yes. 15 Q. Do you remember that motion being 16 approved by the Price Discovery Committee? 17 A. No. I don't. 18 Q. Do you remember that motion 19 ultimately being approved by the Board of 20 Directors of UEP? 21 A. I don't remember. 22 Q. Is this the first time that you</p>

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50 (Pages 599 to 602)

<p style="text-align: right;">599</p> <p>1 became aware that this action was taken by UEP?</p> <p>2 MR. MONICA: Objection.</p> <p>3 THE WITNESS: Which action?</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. The action that's identified in</p> <p>6 the motion of the Price Discovery Committee?</p> <p>7 MR. MONICA: Object to the form of</p> <p>8 the question.</p> <p>9 THE WITNESS: Repeat your</p> <p>10 question, please.</p> <p>11 MR. STUEVE: Read it back for him,</p> <p>12 please.</p> <p>13 (The record was read as</p> <p>14 requested.)</p> <p>15 MR. MONICA: Object to the form of</p> <p>16 the question.</p> <p>17 THE WITNESS: I don't remember</p> <p>18 this motion and this meeting, but that's not the</p> <p>19 way the program works today.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. Do you, though, have any</p> <p>22 recollection of the discussion of this motion</p>	<p style="text-align: right;">601</p> <p>1 AFTERNOON SESSION</p> <p>2 (1:03 p.m.)</p> <p>3 THE VIDEOGRAPHER: The time is</p> <p>4 approximately 1:03 p.m. and we are back on the</p> <p>5 record.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Let me show you what's been marked</p> <p>8 as Exhibit 576?</p> <p>9 (Exhibit Number 576 was marked for</p> <p>10 identification.)</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. You testified yesterday that Super</p> <p>13 Value, the wholesaler, was one of your</p> <p>14 customers; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And can you confirm that</p> <p>17 this is the entity that you're referring to? We</p> <p>18 printed off their website.</p> <p>19 A. Yes. This is Super Value that I</p> <p>20 was referring to.</p> <p>21 Q. Okay.</p> <p>22 (Exhibit Number 577 was marked for</p>
<p style="text-align: right;">600</p> <p>1 for the subsequent approval by UEP?</p> <p>2 MR. MONICA: Objection.</p> <p>3 BY MR. STUEVE:</p> <p>4 Q. Forward of the motion?</p> <p>5 A. I don't remember that. No.</p> <p>6 MR. STUEVE: Why don't we take our</p> <p>7 lunch break here.</p> <p>8 MR. MONICA: Let's go off the</p> <p>9 record and talk about it.</p> <p>10 THE VIDEOGRAPHER: The time is</p> <p>11 12:18 p.m. and we're going off the record.</p> <p>12 (Whereupon, at 12:18 p.m., a lunch</p> <p>13 recess was taken.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">602</p> <p>1 identification.)</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. I'll show you what's been marked</p> <p>4 as Exhibit 577 and ask if you can confirm this</p> <p>5 is the website of Topco, also one of Rose Acre's</p> <p>6 customers that you testified about yesterday?</p> <p>7 MR. MONICA: Counsel, mine is</p> <p>8 highlighted. Is it supposed to be? I want to</p> <p>9 make sure it doesn't matter.</p> <p>10 MR. STUEVE: No. It doesn't</p> <p>11 matter.</p> <p>12 THE WITNESS: Yes. This is the</p> <p>13 Topco I was referring to.</p> <p>14 BY MR. STUEVE:</p> <p>15 Q. Okay.</p> <p>16 (Exhibit Number 578 was marked for</p> <p>17 identification.)</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. Let me show you the first page of</p> <p>20 Centrella's website, it's been marked as</p> <p>21 Exhibit 578.</p> <p>22 Can you confirm for me this is the</p>

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<p style="text-align: right;">603</p> <p>1 Centrella you were testifying about yesterday</p> <p>2 that purchased Certified?</p> <p>3 A. I don't recall anything talking</p> <p>4 about Centrella purchasing Certified.</p> <p>5 Q. Okay. If you remember yesterday,</p> <p>6 I asked you about whether Certified had been</p> <p>7 purchased. Do you remember that?</p> <p>8 A. Oh. I'm sorry. Certified</p> <p>9 Grocers.</p> <p>10 Q. Yeah. Certified Grocers. I'm</p> <p>11 sorry. Do you remember that?</p> <p>12 A. They purchased Certified Grocers</p> <p>13 Midwest. I remember that.</p> <p>14 Q. Centrella did?</p> <p>15 A. Yes.</p> <p>16 Q. Centrella did?</p> <p>17 A. Yes.</p> <p>18 Q. I asked you if they had a similar</p> <p>19 business model as Certified. Do you recall</p> <p>20 that?</p> <p>21 A. I remember they purchased</p> <p>22 Certified. Yes.</p>	<p style="text-align: right;">605</p> <p>1 Q. All right. And he is the one that</p> <p>2 actually serves on the USEM Board of Directors</p> <p>3 and would actually vote on the exports; is that</p> <p>4 correct, sir?</p> <p>5 A. That is correct.</p> <p>6 Q. Now, what involvement did you</p> <p>7 have -- this is the big picture -- with respect</p> <p>8 to the USEM exports that Rose Acre participated</p> <p>9 in?</p> <p>10 A. My involvement would be working</p> <p>11 with Bob Niewedde and our customer service</p> <p>12 people and Lindsey Schepman on the supply of the</p> <p>13 eggs for the exports to make sure to execute the</p> <p>14 production and distribution of those.</p> <p>15 Q. And would you have had that role</p> <p>16 each and every time that Rose Acre participated</p> <p>17 in the USEM exports?</p> <p>18 A. Yes. I did.</p> <p>19 Q. Did you have any involvement in</p> <p>20 the decision for Rose Acre to join USEM in 2006?</p> <p>21 A. No. I did not.</p> <p>22 Q. Whose decision was that?</p>
<p style="text-align: right;">604</p> <p>1 Q. Is this the Centrella you were</p> <p>2 referring to? I want to confirm that that's</p> <p>3 referenced on this website, 578?</p> <p>4 A. That purchased Certified Grocers?</p> <p>5 Q. Yes.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. If you could turn to topic</p> <p>8 22 and confirm that you have been designated to</p> <p>9 testify on behalf of Rose Acre with respect to</p> <p>10 22G through L?</p> <p>11 A. Yes.</p> <p>12 Q. And what did you do to prepare</p> <p>13 yourself to testify concerning 22G through L?</p> <p>14 A. Just my general knowledge of being</p> <p>15 involved with US Egg Marketers on this topic.</p> <p>16 Q. Now, you're not on the Board of</p> <p>17 USEM; is that correct?</p> <p>18 A. That is correct.</p> <p>19 Q. Did you talk to Marcus Rust in</p> <p>20 preparation for your testimony today in response</p> <p>21 to 22G through L?</p> <p>22 A. No. I did not.</p>	<p style="text-align: right;">606</p> <p>1 A. Marcus Rust.</p> <p>2 Q. Who else -- let me ask this.</p> <p>3 Anyone other than you, Bob Niewedde, and Lindsey</p> <p>4 Schepman that would actually be involved in the</p> <p>5 execution of the various exports that Rose Acre</p> <p>6 participated with USEM in?</p> <p>7 A. Yes. Our -- our -- many people</p> <p>8 got involved.</p> <p>9 Q. Okay.</p> <p>10 A. Because when you -- when we</p> <p>11 produce eggs, Bob would get the orders and then</p> <p>12 they would be assigned to a farm. If you go --</p> <p>13 to the cooler manager at that particular</p> <p>14 location that would have been producing the</p> <p>15 eggs.</p> <p>16 The cooler manager, his</p> <p>17 responsibility is to fill out the daily</p> <p>18 production schedules for the egg graders for the</p> <p>19 egg -- processing manager for the egg graders.</p> <p>20 They would in turn, there's approximately 12</p> <p>21 people -- 12 to 15 people per egg grader. Their</p> <p>22 responsibility then would be to process and</p>

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<p style="text-align: right;">607</p> <p>1 package through their machine the eggs would be</p> <p>2 washed and sanitized, graded, and packaged into</p> <p>3 loose flats and then put into cases which then</p> <p>4 would be sent to the line men and the line men</p> <p>5 they go through a tape machine, be taped. So</p> <p>6 the line men would then stack the cases</p> <p>7 transport them into our egg cooler. From there</p> <p>8 the shipping department would load them onto</p> <p>9 trucks to be transported to the ultimate</p> <p>10 destination for delivery so our transportation</p> <p>11 department would become involved.</p> <p>12 Our accounts receivable department</p> <p>13 would be involved in invoicing for the eggs and</p> <p>14 collecting money.</p> <p>15 Our customer service people would</p> <p>16 be involved with the plants, verifying to make</p> <p>17 sure the eggs were shipped and went out and were</p> <p>18 invoiced correctly.</p> <p>19 I guess you could go back to the</p> <p>20 flock managers that run the chicken houses and</p> <p>21 the feed people that are responsible for feeding</p> <p>22 the birds.</p>	<p style="text-align: right;">609</p> <p>1 A. That has happened. Yes.</p> <p>2 Q. Who would be obligated to do that</p> <p>3 at Rose Acre?</p> <p>4 A. Bob Niewedde.</p> <p>5 Q. Would you assist him in that</p> <p>6 process?</p> <p>7 A. Yes.</p> <p>8 Q. Anyone else?</p> <p>9 A. In the actual going out to procure</p> <p>10 them. No. In some of the decisions to -- if we</p> <p>11 had to procure eggs that could have involved</p> <p>12 Lindsey and Aaron, as well.</p> <p>13 Q. Okay. And --</p> <p>14 A. And Jeff Cutler.</p> <p>15 Q. And then, Rose Acre participated</p> <p>16 in several USDA exports since 2006; is that</p> <p>17 correct, sir?</p> <p>18 A. I don't know how many for sure.</p> <p>19 Q. Which egg production facilities</p> <p>20 would have contributed eggs over that time to</p> <p>21 fulfill those orders?</p> <p>22 A. Our farms in North Carolina and</p>
<p style="text-align: right;">608</p> <p>1 I mean, you could ultimately say</p> <p>2 through the whole process all the way back to</p> <p>3 our, you know, from the flock side on, once the</p> <p>4 eggs are produced and into the processing. So</p> <p>5 to make this happen there's a lot of people</p> <p>6 involved.</p> <p>7 Q. Because the -- these exports were</p> <p>8 very large exports that needed to be filled in a</p> <p>9 very short period of time; correct, sir?</p> <p>10 A. Which -- no. Not always.</p> <p>11 Q. When you say accounts receivable</p> <p>12 invoicing, who would be invoiced?</p> <p>13 A. It would be -- I don't exactly</p> <p>14 know whose name -- it would be within USEM and</p> <p>15 UEP, but I don't know exactly what the heading</p> <p>16 of the invoice said.</p> <p>17 Q. But it would have been someone at</p> <p>18 USEM that would have been invoiced?</p> <p>19 A. Yes.</p> <p>20 Q. Now, were there exports in which</p> <p>21 Rose Acre would have to purchase eggs in order</p> <p>22 to fulfill its commitment?</p>	<p style="text-align: right;">610</p> <p>1 Georgia, as well as Indiana, I recall.</p> <p>2 Q. Which ones in Indiana?</p> <p>3 A. Cort Acres in Seymour, Indiana.</p> <p>4 Q. And then which ones in Georgia?</p> <p>5 A. Oconee Egg Farm and Cannon Egg</p> <p>6 Farm.</p> <p>7 Q. And then which ones in North</p> <p>8 Carolina?</p> <p>9 A. Hyde County Egg Farm, H-Y-D-E.</p> <p>10 Q. How long has Rose Acre had the</p> <p>11 Cort Acres production facility?</p> <p>12 A. It was -- started construction in</p> <p>13 1978.</p> <p>14 Q. Okay. And what about Cannon in</p> <p>15 Indiana?</p> <p>16 A. Cannon is in Ohio -- Georgia.</p> <p>17 Q. Excuse me. Cannon in Georgia?</p> <p>18 A. Cannon has been about five years</p> <p>19 now.</p> <p>20 Q. Okay. So that would have been</p> <p>21 approximately 2008?</p> <p>22 A. Approximately, yes.</p>

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<p style="text-align: right;">611</p> <p>1 Q. And when what about Oconee Egg?</p> <p>2 A. Oconee was -- it was prior to</p> <p>3 2005, early 2000s. I don't know the exact year.</p> <p>4 Q. Okay. What about Hyde County?</p> <p>5 A. We -- construction I believe</p> <p>6 started in 2005.</p> <p>7 Q. Okay. Sir, let me show you what's</p> <p>8 previously been marked as Exhibit 518. You had</p> <p>9 mentioned earlier in your testimony about a</p> <p>10 brochure. Is this the type of brochure, for</p> <p>11 example, you would have provided AWG?</p> <p>12 A. No, sir.</p> <p>13 Q. What is this?</p> <p>14 A. This was a previous brochure that</p> <p>15 was put together by a salesperson that used to</p> <p>16 work for us, but we don't use this anymore.</p> <p>17 Q. Was it used at one point in time</p> <p>18 when you solicited customers?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Is the new one in a similar</p> <p>21 format?</p> <p>22 A. No. It's not.</p>	<p style="text-align: right;">613</p> <p>1 remember attending at least one meeting.</p> <p>2 Q. Okay. Who else would have</p> <p>3 attended those meetings?</p> <p>4 A. Marcus Rust.</p> <p>5 Q. Anyone else?</p> <p>6 A. Not that I can recall. No.</p> <p>7 Q. Okay. Show you what's been marked</p> <p>8 as 321. Would you have -- can you confirm for</p> <p>9 me that this is the USEM, the initial membership</p> <p>10 agreement that was entered into by Rose Acre?</p> <p>11 A. Yes. It appears to be.</p> <p>12 Q. Okay. Would you have participated</p> <p>13 in filling this out?</p> <p>14 A. No, sir.</p> <p>15 Q. Okay. And whose signature is on</p> <p>16 there?</p> <p>17 A. That's Marcus'.</p> <p>18 Q. Now, we've -- we've confirmed</p> <p>19 through other testimony that actually when Rose</p> <p>20 Acre joined USEM was actually in 2006; is that</p> <p>21 correct?</p> <p>22 A. I don't know. This says 2007.</p>
<p style="text-align: right;">612</p> <p>1 Q. Okay. If you look at on the</p> <p>2 second page, down at the bottom there?</p> <p>3 A. Okay.</p> <p>4 Q. Is Oconee listed there?</p> <p>5 A. Yes.</p> <p>6 Q. Where?</p> <p>7 A. Under the history and growth of</p> <p>8 Rose Acre.</p> <p>9 Q. Yeah. Which year?</p> <p>10 A. 1999.</p> <p>11 Q. Okay. I see Oconee. Does that</p> <p>12 refresh your recollection when that would have</p> <p>13 been built?</p> <p>14 A. Yes.</p> <p>15 Q. So Cort Acres broke ground in '78.</p> <p>16 Oconee would have been '99. Hyde County would</p> <p>17 have been in '05 and Cannon Egg in '08; is that</p> <p>18 correct, sir?</p> <p>19 A. Yes. Approximately '08. Yes.</p> <p>20 Q. All right. Did you participate in</p> <p>21 any of the USEM export meetings?</p> <p>22 A. I know I attended one -- I</p>	<p style="text-align: right;">614</p> <p>1 Q. You don't know one way or the</p> <p>2 other?</p> <p>3 A. No. I don't.</p> <p>4 (Exhibit Number 579 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Let me show you what's been marked</p> <p>8 as Exhibit 585?</p> <p>9 THE REPORTER: 585?</p> <p>10 MR. HICKEY: Sorry. We should</p> <p>11 switch that out.</p> <p>12 MR. MONICA: Yeah. If you could</p> <p>13 change it. Still 585?</p> <p>14 MR. HICKEY: It will be 579.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. Show you what's been marked as</p> <p>17 Exhibit 579. Does this appear to be the</p> <p>18 August 2010 membership agreement entered into</p> <p>19 between Rose Acre and USEM?</p> <p>20 MR. MONICA: Objection.</p> <p>21 MS. REDDING: Can we get the Bates</p> <p>22 number, please?</p>

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<p style="text-align: right;">615</p> <p>1 MR. STUEVE: Yeah, UE 1028216</p> <p>2 through 21.</p> <p>3 BY MR. STUEVE:</p> <p>4 Q. Have you seen this document</p> <p>5 before?</p> <p>6 A. I don't recall.</p> <p>7 Q. Did you participate in providing</p> <p>8 the information that's contained in this</p> <p>9 document?</p> <p>10 A. No. I didn't.</p> <p>11 Q. Is that Marcus Rust's signature?</p> <p>12 A. Yes. It is.</p> <p>13 Q. On 217 there at the bottom?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, do you know who Larry</p> <p>16 Seger is?</p> <p>17 A. Yes. I do.</p> <p>18 Q. Who is Larry Seger?</p> <p>19 A. He's passed away.</p> <p>20 Q. Okay. When he was alive did</p> <p>21 you -- what organization did he work for?</p> <p>22 A. Well, he was Wabash Valley Produce</p>	<p style="text-align: right;">617</p> <p>1 Q. What is UEA?</p> <p>2 A. United Egg Association.</p> <p>3 Q. Has Rose Acre been a member of</p> <p>4 that association?</p> <p>5 A. Yes.</p> <p>6 Q. And for how long?</p> <p>7 A. For many years. I don't recall.</p> <p>8 I don't remember when we joined, but for a long</p> <p>9 time.</p> <p>10 Q. And who from Rose Acre</p> <p>11 participated in the United Egg Association?</p> <p>12 A. Over the years, myself, Victor</p> <p>13 Righerink, currently Jeff Cutler. We -- Todd</p> <p>14 Vogle, our quality manager, may have attended a</p> <p>15 meeting. I can vaguely recall he might have</p> <p>16 attended sometime, but never -- I don't think he</p> <p>17 was ever a member -- well, we're a member</p> <p>18 because we're a company member. I'm sorry.</p> <p>19 But -- Larry McVee. Possibly Yves Crepelay.</p> <p>20 I'm not -- oh, don't ask me to --</p> <p>21 Q. As far as current employees?</p> <p>22 A. Jeff Cutler.</p>
<p style="text-align: right;">616</p> <p>1 in DuBois, Indiana.</p> <p>2 Q. When did he pass away?</p> <p>3 A. Several years ago.</p> <p>4 Q. While he was alive, did you</p> <p>5 understand he was involved in the USEM export</p> <p>6 program?</p> <p>7 A. Yes. I did.</p> <p>8 Q. What was his role?</p> <p>9 A. I believe -- I don't know the</p> <p>10 title, it was either president or chairman,</p> <p>11 whichever that title was.</p> <p>12 Q. Okay. Let me show you what's been</p> <p>13 marked as Exhibit 173. In this communication</p> <p>14 down at the bottom it has Larry Seger USEM</p> <p>15 chairman?</p> <p>16 A. Okay.</p> <p>17 Q. Is that consistent with your</p> <p>18 recollection?</p> <p>19 A. Yes.</p> <p>20 Q. This is to all UEP, UEA and USEM</p> <p>21 members. Do you see that?</p> <p>22 A. Yes. I do.</p>	<p style="text-align: right;">618</p> <p>1 Q. So Marcus, Victor, Jeff Cutler and</p> <p>2 you would have been involved in it?</p> <p>3 A. The most active; correct.</p> <p>4 Q. And that is also a trade</p> <p>5 association that Al Pope and Gene Gregory led;</p> <p>6 correct?</p> <p>7 MR. MONICA: Object to the form.</p> <p>8 THE WITNESS: No. It was --</p> <p>9 UEA -- United Egg Association -- when I say, no,</p> <p>10 UEA was a -- separate from UEP, but UEP -- my</p> <p>11 understanding, I think I understand that there</p> <p>12 is a fee for management services to UEP for UEA</p> <p>13 but most of our -- it's either Howard McGuire</p> <p>14 was kind of the -- when I was active that I</p> <p>15 recall -- I've not been to the meetings for many</p> <p>16 years, but when I was there, I remember Howard</p> <p>17 McGuire was kind of like our main go to guy that</p> <p>18 helped us on issues that we had for the egg</p> <p>19 breaking industry.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. And you indicated though that UEA</p> <p>22 would pay a management fee to UEP; is that</p>

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<p style="text-align: right;">619</p> <p>1 correct?</p> <p>2 A. That's what I remember.</p> <p>3 Q. And UEP would have been run by Al</p> <p>4 Pope and then Gene Gregory during that time</p> <p>5 period; correct, sir?</p> <p>6 A. UEP. Yes.</p> <p>7 Q. Did they attend the UEA meetings?</p> <p>8 A. I don't remember particularly</p> <p>9 how -- I know -- I can -- I recall Gene possibly</p> <p>10 being in meetings.</p> <p>11 Q. Was Rose Acre a member of United</p> <p>12 Egg Association prior to 2002?</p> <p>13 A. I don't remember.</p> <p>14 Q. What documents would you look at</p> <p>15 to refresh your recollection on that?</p> <p>16 A. I would look at -- I would</p> <p>17 probably have to go back and look in accounts</p> <p>18 payable to see if we paid dues. That's probably</p> <p>19 what I would have to look at, see if we ever</p> <p>20 paid any dues into UEA prior to that.</p> <p>21 Q. In the second paragraph there of</p> <p>22 the letter that was written by Larry Seger of</p>	<p style="text-align: right;">621</p> <p>1 Voices that would have been sent out to UEP</p> <p>2 members, dated May 1st, 2003; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. And at this time, Rose Acre would</p> <p>5 have been a member; right?</p> <p>6 A. Correct.</p> <p>7 Q. And under the -- in fact, Rose</p> <p>8 Acre is the one that produced this document; is</p> <p>9 that right, Exhibit 243?</p> <p>10 A. It has RA at the bottom.</p> <p>11 Q. And it says -- it's talking about</p> <p>12 the industry's economic recovery up at the top.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And it says there are possibly</p> <p>16 many theories for this recovery. However, we</p> <p>17 believe there are at least four major reasons.</p> <p>18 They are: First is the reduced chick hatch. Do</p> <p>19 you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And that would be related to the</p> <p>22 certified program; correct?</p>
<p style="text-align: right;">620</p> <p>1 USEM to all UEP, UEA and USEM members, it says</p> <p>2 the main purpose of exports is to strengthen the</p> <p>3 current market, unquestionably, that always</p> <p>4 happens. Do you see that?</p> <p>5 A. Yes. I do.</p> <p>6 Q. Strengthening a weak market or</p> <p>7 raising a steady market is what exports are</p> <p>8 meant to accomplish in the short run. Do you</p> <p>9 see that?</p> <p>10 A. That's what's written there.</p> <p>11 Q. And that was your understanding</p> <p>12 and when I'm referring to your, I'm referring to</p> <p>13 Rose Acre that was your understanding of the</p> <p>14 purpose of the USEM exports; correct, sir?</p> <p>15 A. No.</p> <p>16 MR. MONICA: Objection to form.</p> <p>17 You can answer.</p> <p>18 THE WITNESS: No. That's not my</p> <p>19 understanding.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. Show you what's been marked as</p> <p>22 Exhibit 243. And this is a May 1, 2003 United</p>	<p style="text-align: right;">622</p> <p>1 MS. REDDING: Objection.</p> <p>2 MR. MONICA: Objection.</p> <p>3 THE WITNESS: No. I can't say</p> <p>4 that.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. And number 2 would be UEP's animal</p> <p>7 care certification program. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. That would be referring to the</p> <p>10 cage space reduction requirements of that</p> <p>11 program; correct, sir?</p> <p>12 MR. MONICA: Object to the form.</p> <p>13 THE WITNESS: No. I don't agree</p> <p>14 with that.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. And number 4, it lists -- the</p> <p>17 fourth one is exports taken by United States Egg</p> <p>18 Marketers. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. That would be consistent with</p> <p>21 Mr. Seger, the chairman of USEM's statement that</p> <p>22 the purpose of the exports is to boost egg</p>

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<p style="text-align: right;">623</p> <p>1 prices in the domestic market in the short run; 2 correct, sir?</p> <p>3 A. I don't agree with that. No.</p> <p>4 Q. Okay. Now, if you look down here 5 at the second to last paragraph here, it says, 6 we believe the major reason for the industry's 7 economic recovery must be attributed to the USEM 8 export of 550 trailer loads of shell eggs 9 through the period late October through mid 10 March. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. 550 trailer loads, that would be 13 almost two years of shell egg sales for Rose 14 Acre; correct?</p> <p>15 A. No.</p> <p>16 Q. I thought you said that you, on an 17 annual basis, were using 300 trailer loads. Do 18 you see that?</p> <p>19 MR. MONICA: Objection. 20 THE WITNESS: No. 21 BY MR. STUEVE: 22 Q. Okay. So let me -- let me go</p>	<p style="text-align: right;">625</p> <p>1 MR. MONICA: Objection. 2 THE WITNESS: No. I don't agree 3 with that. I can't tell you what Larry Seger 4 was thinking. 5 (Exhibit Number 580 was marked for 6 identification.) 7 BY MR. STUEVE: 8 Q. Let me show you what's been marked 9 as Exhibit 580, that's Bates range RAUPDATE 10 0067579 through 93. 11 Did you review this document in 12 preparation for your deposition today? 13 A. No. I didn't. 14 Q. If you would, topic 22K asks for 15 you to testify on behalf of Rose Acre concerning 16 the impact or effect of USEM exports on the 17 supply of eggs or egg products. Do you see 18 that? That's in 517. That's number 22K? 19 A. Yes. 20 Q. Did counsel for Rose Acre show you 21 Exhibit 580 in preparation for your testimony 22 today?</p>
<p style="text-align: right;">624</p> <p>1 on -- 2 A. I -- 3 Q. Go ahead. 4 A. I sell 45 trailer loads a day, 5 sir, per day. 6 Q. What were you referring to the 300 7 trailer loads? 8 A. Per week. 9 Q. Per week. Excuse me. So the 550 10 number would be close to two weeks of your shell 11 egg sale; is that correct, sir, from all your 12 facilities? 13 A. Approximately, yes. 14 Q. Let me ask you this. It says, we 15 believe these exports have contributed nearly 16 300 million to the industry recovery. Do you 17 see that? 18 A. Yes. 19 Q. Again, that would be consistent 20 with the chairman of USEM, Larry Seger's 21 statement that the purpose of the exports was my 22 boost domestic prices; correct, sir?</p>	<p style="text-align: right;">626</p> <p>1 A. No. 2 Q. You can confirm this is a Rose 3 Acre document; is it not, sir? 4 A. It's not a Rose Acre document but 5 it's got Rose Acre at the bottom so it may have 6 been produced by Rose Acre, but it is not a Rose 7 Acre document. 8 Q. It was produced by Rose Acre; is 9 that correct, sir? 10 A. What do you mean by produced? 11 Q. Exhibit 580 has the Bates range RA 12 which would stand for Rose Acre. Do you 13 understand that? 14 A. Yes. 15 Q. Okay. Do you know whose files 16 this would have come from, from Rose Acre? 17 A. Probably mine. 18 Q. And, if you would, sir, over on 19 the -- it's the last two digits are 86? 20 A. Okay. 21 Q. Under USEM. Do you see that at 22 the bottom?</p>

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<p style="text-align: right;">627</p> <p>1 A. Yes.</p> <p>2 Q. It says, UEP assumed the</p> <p>3 management of United States Egg Marketers, USEM,</p> <p>4 in 2000. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Is that consistent with your</p> <p>7 recollection?</p> <p>8 A. I don't know about way back in</p> <p>9 2000.</p> <p>10 Q. At the time Rose Acre joined in</p> <p>11 2006, was UEP managing United States Egg</p> <p>12 Marketers?</p> <p>13 A. The document that you show me that</p> <p>14 Marcus signed was 2007, but, yes, at that time,</p> <p>15 I would probably recall UEP assisted in the</p> <p>16 management of US Egg Marketers.</p> <p>17 Q. Since then USEM activities have</p> <p>18 been limited to a conference call three times</p> <p>19 per week and an export program. Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. When Rose Acre joined USEM in 2006</p>	<p style="text-align: right;">629</p> <p>1 the question.</p> <p>2 THE WITNESS: No. I don't</p> <p>3 necessarily agree with that.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. If you would, over on 587 under</p> <p>6 exports, it -- you see that category there,</p> <p>7 its's on RA the last two digits are 87. Do you</p> <p>8 see that?</p> <p>9 A. Yes.</p> <p>10 Q. Under exports, it says, many UEP</p> <p>11 members participate in exports through their</p> <p>12 USEM membership. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And that would be true of Rose</p> <p>15 Acre; right?</p> <p>16 MR. MONICA: Objection.</p> <p>17 THE WITNESS: If we're talking</p> <p>18 about the date range that we have been a USEM</p> <p>19 member; correct.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. Then it says these exports --</p> <p>22 excuse me -- it says, second sentence there, it</p>
<p style="text-align: right;">628</p> <p>1 did it participate in the conference calls?</p> <p>2 A. I don't recall.</p> <p>3 Q. Has it -- from 2006 up to the</p> <p>4 present, has it participated in those conference</p> <p>5 calls?</p> <p>6 A. I know that Bob Niewedde</p> <p>7 participates in some conference calls, I just</p> <p>8 can't tell you exactly when he was on them.</p> <p>9 Q. We're talking about USEM</p> <p>10 conference calls?</p> <p>11 A. Yes. We are.</p> <p>12 Q. It says, these timely exports have</p> <p>13 been a major benefit to the egg industry in</p> <p>14 total, not just to USEM members. Do you see</p> <p>15 that?</p> <p>16 A. Yes. I do.</p> <p>17 Q. You understood again what was</p> <p>18 being indicated there that by executing these</p> <p>19 large exports into foreign markets, it reduced</p> <p>20 the supply of eggs and boosted domestic prices;</p> <p>21 correct, sir?</p> <p>22 MR. MONICA: Object to the form of</p>	<p style="text-align: right;">630</p> <p>1 says, these exports are only taken in large</p> <p>2 volume shipments over a very short delivery</p> <p>3 period for the purpose of having the greatest</p> <p>4 impact upon surplus supply reduction. Do you</p> <p>5 see that?</p> <p>6 A. Yes.</p> <p>7 Q. And you understood that that was</p> <p>8 the purpose of the USEM exports; correct?</p> <p>9 A. No.</p> <p>10 MR. MONICA: Object to the form.</p> <p>11 THE WITNESS: No. I don't agree</p> <p>12 with that.</p> <p>13 Q. I'll show you what's been marked</p> <p>14 as Exhibit 48. Have you seen this document</p> <p>15 before?</p> <p>16 A. No. I don't recall ever seeing</p> <p>17 this.</p> <p>18 Q. If you would, turn back to the</p> <p>19 last page. This is a -- according to the</p> <p>20 testimony of UEP, this is a summary under</p> <p>21 exports 2000 the summary of the exports that</p> <p>22 USEM executed in the year 2000. Do you see</p>

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<p style="text-align: right;">631</p> <p>1 that, where that is on that page?</p> <p>2 MR. MONICA: Objection.</p> <p>3 THE WITNESS: I don't know that</p> <p>4 this is the summary. I see it lists exports and</p> <p>5 dates and people's names, but I don't.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Are you familiar with Worldwide</p> <p>8 Egg?</p> <p>9 A. No. I'm not.</p> <p>10 Q. What about Dolphin Fuchs?</p> <p>11 A. Yes.</p> <p>12 Q. What is that?</p> <p>13 A. Fuchs -- Jürgen Fuchs is an egg</p> <p>14 producer in Germany. Dolphin is a shipping and</p> <p>15 trading company located in Georgia.</p> <p>16 Q. Okay. What about Worldwide Egg?</p> <p>17 A. No idea.</p> <p>18 Q. And then Dolphin Fuchs again and</p> <p>19 Dolphin Fuchs again is listed there; is that</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what is meant by</p>	<p style="text-align: right;">633</p> <p>1 them to be sold in Kroger stores?</p> <p>2 A. No, sir.</p> <p>3 Q. Have you sold Class 1 eggs to</p> <p>4 Topco?</p> <p>5 A. No.</p> <p>6 Q. Save-A-Lot?</p> <p>7 A. No.</p> <p>8 Q. Wal-Mart?</p> <p>9 A. It's illegal, sir, by USDA</p> <p>10 standards, you can't. So I've never sold them</p> <p>11 to any supermarket.</p> <p>12 Q. Okay. What is legal for you to</p> <p>13 sell Class 1 for?</p> <p>14 MR. MONICA: Objection. Vague.</p> <p>15 You can go ahead and answer it.</p> <p>16 THE WITNESS: Okay. A Class 1 --</p> <p>17 when you refer -- what I would refer to as a</p> <p>18 Class 1 is a Class 1 nest run, which means the</p> <p>19 product came from a chicken house that's been</p> <p>20 put onto flats. In this case, if they've -- if</p> <p>21 they've -- okay. Class 1 nest runs -- a Class 1</p> <p>22 nest run would have to go to a grading plant.</p>
<p style="text-align: right;">632</p> <p>1 Class 1?</p> <p>2 A. Class 1 would be a Class 1 nest</p> <p>3 run product, ungraded.</p> <p>4 Q. And are those types of eggs</p> <p>5 typically used for breaking?</p> <p>6 A. They can be.</p> <p>7 Q. If they're ungraded -- let me ask</p> <p>8 you this.</p> <p>9 Have you sold Class 1 shell eggs</p> <p>10 to any of your shell egg customers that sell</p> <p>11 them to -- that are then sold to customers</p> <p>12 shopping at grocery stores?</p> <p>13 MR. MONICA: Objection. Compound.</p> <p>14 THE WITNESS: Wow. That question</p> <p>15 is really -- you asked like three questions in</p> <p>16 there, I believe.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. Do I understand you don't</p> <p>19 understand my question, sir?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So have you sold Class 1</p> <p>22 eggs, for example, to Kroger for it to be -- for</p>	<p style="text-align: right;">634</p> <p>1 To be sold to a supermarket in the United</p> <p>2 States, under USDA Egg Products Inspection Act,</p> <p>3 you have to wash and grade the eggs under the</p> <p>4 USDA guidelines, which is you have -- there's --</p> <p>5 there's -- you have to -- first you've got</p> <p>6 temperature requirements for the wash water.</p> <p>7 You've got sanitation requirements that you have</p> <p>8 to go through.</p> <p>9 And then packing and grading</p> <p>10 requirements. And then under most state laws,</p> <p>11 and under USDA, if you put a shield on the</p> <p>12 carton, you have to follow the weight standards</p> <p>13 that's established by USDA that has to be</p> <p>14 clearly marked and some states have certain</p> <p>15 regulations about what size those things are.</p> <p>16 So you have to pass those laws before I could</p> <p>17 sell it to a supermarket that in turn would sell</p> <p>18 it to a consumer.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. What market does Rose Acre have</p> <p>21 for nest run ungraded eggs?</p> <p>22 A. I'm sorry. What market -- what do</p>

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<p style="text-align: right;">635</p> <p>1 you mean by what market do we have?</p> <p>2 Q. Who does Rose Acre sell Class 1,</p> <p>3 ungraded eggs to?</p> <p>4 A. I don't.</p> <p>5 Q. Okay. Do you use them in your</p> <p>6 breaking facilities?</p> <p>7 A. I don't today. I don't recall in</p> <p>8 the past if I used Class 1's. It's not a term</p> <p>9 that's used much anymore.</p> <p>10 Q. What does Rose Acre do with its</p> <p>11 Class 1 or nest run ungraded eggs?</p> <p>12 A. Our birds -- our birds, other than</p> <p>13 our cage-free at Donovan -- today, other than</p> <p>14 Donovan and Jen Acre Plus, which are our</p> <p>15 cage-free farms, 100 percent of Rose Acre's</p> <p>16 production is in line with our processing</p> <p>17 plants. So we do not produce that grade of egg.</p> <p>18 Ours are in line so we're vertically integrated.</p> <p>19 Our processing plants and breaking plants are</p> <p>20 connected directly with the chicken houses, so</p> <p>21 we don't produce that product.</p> <p>22 Q. Would that be true since 2006,</p>	<p style="text-align: right;">637</p> <p>1 Crystal Farms?</p> <p>2 A. Can I go back and look through the</p> <p>3 notes you handed me?</p> <p>4 Q. Sure.</p> <p>5 A. It was after 2005.</p> <p>6 Q. I believe it was in '07, but in</p> <p>7 any event, it was after 2005?</p> <p>8 A. Yes.</p> <p>9 Q. Was that for approximately a one</p> <p>10 year period? Do you recall?</p> <p>11 A. It was more than a year.</p> <p>12 Q. It was?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Other than that exception</p> <p>15 from 2006 to the present, Rose Acre simply does</p> <p>16 not produce Class 1 nest run ungraded eggs; is</p> <p>17 that correct, sir?</p> <p>18 A. We don't pack Class 1 nest run</p> <p>19 because our eggs -- every egg we produce in line</p> <p>20 with our farms have to go through the egg</p> <p>21 washer. We have no means to package the eggs,</p> <p>22 other than -- the only time we would have would</p>
<p style="text-align: right;">636</p> <p>1 sir?</p> <p>2 A. No. When we purchased Crystal</p> <p>3 Farms in Georgia, it came with a little over</p> <p>4 a million birds that were on contract. When we</p> <p>5 assumed those contracts in the purchase, those</p> <p>6 were -- those houses were producing -- would</p> <p>7 have been producing nest run eggs we had to</p> <p>8 bring to our locations to our processing</p> <p>9 locations. We've -- since then, we've ceased to</p> <p>10 operate those contracts and no longer have those</p> <p>11 nest run eggs.</p> <p>12 Q. Do those nest run eggs ultimately,</p> <p>13 were they graded then?</p> <p>14 A. They could have been graded or</p> <p>15 broken.</p> <p>16 Q. And for what period of time would</p> <p>17 the nest run eggs have been broken?</p> <p>18 A. I don't recall the exact dates</p> <p>19 that we owned those contracts. I would have to</p> <p>20 look that up. But any time during that period</p> <p>21 that we owned those contracts.</p> <p>22 Q. When do you recall acquiring</p>	<p style="text-align: right;">638</p> <p>1 have been if we were putting in a new egg grader</p> <p>2 in the processing plant and if we hooked up a</p> <p>3 farm packer temporarily for less than a week</p> <p>4 while we had to put a new egg grading machine</p> <p>5 in, we would have nest run those eggs off onto</p> <p>6 loose and then have to rehandle them because we</p> <p>7 didn't have a machine in place to break them at</p> <p>8 the time. So other than that exception, when we</p> <p>9 replaced equipment, no.</p> <p>10 Q. We're talking about nearly</p> <p>11 100 percent of the eggs that were produced</p> <p>12 during that time period would have been in your</p> <p>13 in line production?</p> <p>14 A. Which time period?</p> <p>15 Q. From '06 to the present?</p> <p>16 A. No, because we had over a million</p> <p>17 birds on contract.</p> <p>18 Q. Excluding Crystal Farms, that</p> <p>19 exception?</p> <p>20 A. Excluding the contract birds.</p> <p>21 Q. Right, Crystal Farm birds you</p> <p>22 identified?</p>

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<p style="text-align: right;">639</p> <p>1 A. Yes.</p> <p>2 Q. Other than those, nearly</p> <p>3 100 percent from 2006 to the present would have</p> <p>4 been in line and, therefore, not been nest run</p> <p>5 ungraded eggs; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Now, if you jump over to 2006 over</p> <p>8 on 35, you'll see the Class 1 reference again;</p> <p>9 is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And --</p> <p>12 A. I guess the 11/1 to 11/15.</p> <p>13 Q. 11/1 to 11/7 and then 11/1 to</p> <p>14 11/15.</p> <p>15 A. Okay, yes.</p> <p>16 Q. Did Rose Acre participate in those</p> <p>17 exports?</p> <p>18 A. I don't remember.</p> <p>19 Q. What did you do to prepare</p> <p>20 yourself to testify with respect to the 22G,</p> <p>21 which is your participation in any USEM exports</p> <p>22 after becoming a USEM member including financial</p>	<p style="text-align: right;">641</p> <p>1 Q. You did not review those in</p> <p>2 preparation for your testimony in response to</p> <p>3 22G; is that correct?</p> <p>4 A. That is correct.</p> <p>5 Q. All right. Now, there's a</p> <p>6 reference under the exports for 2007, just right</p> <p>7 above where we were just looking. It has graded</p> <p>8 XLG/large. What do you understand that to mean?</p> <p>9 A. That would be graded extra large</p> <p>10 and large combination, a mixed load blended</p> <p>11 between extra large and large eggs.</p> <p>12 Q. Do you understand what that \$0.39</p> <p>13 reference is?</p> <p>14 A. I'm sorry. I was looking up</p> <p>15 there. Since I haven't seen this document, I</p> <p>16 didn't prepare it. There's not a heading on it.</p> <p>17 I mean, it would only be speculation what that</p> <p>18 may be.</p> <p>19 Q. What is your guess as to what that</p> <p>20 is?</p> <p>21 A. In looking at the document, my</p> <p>22 guess would be is that's what the eggs were sold</p>
<p style="text-align: right;">640</p> <p>1 obligations of an exporter?</p> <p>2 A. I don't think I was designated on</p> <p>3 G. Was I?</p> <p>4 MR. MONICA: Yes. You are.</p> <p>5 THE WITNESS: On G?</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Yeah.</p> <p>8 A. I couldn't remember which ones</p> <p>9 here. Okay.</p> <p>10 Q. Did you review any documents in</p> <p>11 preparation for your testimony today concerning</p> <p>12 Rose Acre's participation in USEM exports?</p> <p>13 A. I didn't review any other</p> <p>14 documents. Just my own knowledge.</p> <p>15 Q. Do you have documents concerning</p> <p>16 USEM's exports in -- excuse me. Rose Acre's</p> <p>17 participation, if any, in USEM's exports for</p> <p>18 2006?</p> <p>19 A. If we participated, the documents</p> <p>20 would be in my office.</p> <p>21 Q. Where would you keep those, sir?</p> <p>22 A. They would be in a filing cabinet.</p>	<p style="text-align: right;">642</p> <p>1 for.</p> <p>2 Q. To, for example, Jürgen Fuchs; is</p> <p>3 that right?</p> <p>4 A. Jürgen Fuchs.</p> <p>5 Q. Jürgen Fuchs?</p> <p>6 A. Yes.</p> <p>7 Q. Have you heard the term breaking</p> <p>8 stock?</p> <p>9 A. Yes.</p> <p>10 Q. What do you understand breaking</p> <p>11 stock to mean?</p> <p>12 A. Breaking stock would be eggs that</p> <p>13 are broken for liquid eggs.</p> <p>14 Q. And what -- is there -- what types</p> <p>15 of eggs are typically used by Rose Acre for</p> <p>16 breaking stock?</p> <p>17 A. What types of eggs to break?</p> <p>18 Q. Yeah.</p> <p>19 A. All types. Peewee, small, medium,</p> <p>20 large, extra large, jumbos, super jumbos.</p> <p>21 Q. When someone uses the term Class</p> <p>22 1, do you typically consider those the type of</p>

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<p style="text-align: right;">643</p> <p>1 eggs that would typically be used for breaking 2 or breaking stock? 3 A. It could be. 4 Q. Now, if you would, there is a 5 reference up on 234 to X large and large. Do 6 you see that? White or brown? 7 A. Yes. 8 Q. What do you understand designation 9 to mean? 10 A. It would be large and extra large 11 eggs, white eggs or brown eggs. 12 Q. Okay. And then over on the -- up 13 on the first page, it has large whites stamped. 14 See that classification there? 15 A. First page. Yes. 16 Q. What do you understand that to 17 mean? 18 A. That means that the eggs have to 19 have a US stamp on it because Iraq requires it. 20 Q. Okay. Is there an Urner Barry 21 market for large white stamped? 22 A. Not specific to the stamp, no.</p>	<p style="text-align: right;">645</p> <p>1 owned in relationship to the other members in 2 USEM. 3 Q. And under that formula, Rose Acre 4 had the second largest fulfillment requirement; 5 correct, sir? 6 A. I'm not -- it's possible. 7 Q. Cal-Maine would have also been a 8 member of USEM? 9 A. Yes. They were. 10 Q. And their fulfillment requirement 11 would have been higher than Rose Acre's during 12 that time period? 13 A. Yes. It would have. 14 (Exhibit Number 581 was marked for 15 identification.) 16 BY MR. STUEVE: 17 Q. Show you what's been marked as 18 Exhibit 581. And this is Bates range RA 1359 19 through RA 1368. This is a January 4, 2007, 20 United Voices; is that correct, sir? 21 A. Yes. 22 Q. This would have been produced by</p>
<p style="text-align: right;">644</p> <p>1 Q. What market would be most 2 attributable to large white stamp, large white 3 Urner Barry? 4 MR. MONICA: Objection. Vague. 5 You may answer. 6 THE WITNESS: Well, there's no 7 market for stamped eggs. It's -- it's 8 because -- well, there's no market for those. 9 BY MR. STUEVE: 10 Q. Okay. Did Rose Acre participate 11 in this August 13th through September 25, 2008 12 USEM export? 13 A. We were members then, yes, we 14 would have participated. 15 Q. And the reason why you know that 16 is that once you joined and signed the agreement 17 with USEM, you were required to participate in 18 the export; correct? 19 A. Correct. 20 Q. And how was your allocation of the 21 export determined? 22 A. By the percentage of birds that we</p>	<p style="text-align: right;">646</p> <p>1 Rose Acre? 2 A. I guess. I'm -- produced, I would 3 have -- you received it from Rose Acre. We 4 didn't produce the document. I mean -- 5 Q. Do you believe this document came 6 from your files, sir? 7 A. Yes. 8 Q. Okay. And, if you would, on 9 Exhibit 581, it actually references the fact 10 that Rose Acre joined USEM; is that right? 11 A. Yes. 12 Q. And it says, USEM now has the 13 membership support from producers owning 14 approximately 139 million layers; is that right? 15 A. Yes. 16 Q. And then it goes on to state that 17 UEP's production planning calendar just recently 18 published and distributed. Do you see that? 19 A. Yes. 20 Q. Did Rose Acre receive that? 21 A. I don't recall this specific year, 22 but I have received a production planning</p>

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<p style="text-align: right;">647</p> <p>1 calendar in the past.</p> <p>2 Q. It's no longer being disseminated</p> <p>3 by UEP; correct, sir?</p> <p>4 A. I don't remember seeing them</p> <p>5 lately.</p> <p>6 Q. Okay. That stopped after the</p> <p>7 lawsuit initiated in 2008; correct?</p> <p>8 A. I don't know that for sure.</p> <p>9 Q. It says, UEP's production planning</p> <p>10 calendar just recently published and distributed</p> <p>11 forecast January and February carton large</p> <p>12 prices in the Midwest to average about \$0.84 per</p> <p>13 dozen. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. With the delivery of such a large</p> <p>16 volume export, it is expected that prices will</p> <p>17 exceed UEP's forecast. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. It is also believed that the</p> <p>20 announcement of USEM working on a sizable export</p> <p>21 may have helped hold prices at a higher level</p> <p>22 the last week of December. Do you see that?</p>	<p style="text-align: right;">649</p> <p>1 Q. I'm asking you to assume that</p> <p>2 statement is correct, that, in fact, the export</p> <p>3 boosted the Urner Barry market domestically.</p> <p>4 Rose Acre, if that occurred, would directly</p> <p>5 benefit from that; correct, sir?</p> <p>6 MR. MONICA: Same objection.</p> <p>7 THE WITNESS: I don't want to</p> <p>8 assume, sir.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. Show you what's been previously</p> <p>11 marked as Exhibit 23. Did you review this</p> <p>12 document in preparation for your deposition</p> <p>13 today?</p> <p>14 A. No, sir.</p> <p>15 Q. Look at the Marketing Committee</p> <p>16 meeting minutes of January 23, 2007; is that</p> <p>17 correct, sir?</p> <p>18 A. Yes. That's what it states.</p> <p>19 Q. It lists Marcus Rust as</p> <p>20 participating; is that right?</p> <p>21 A. Yes. It does.</p> <p>22 Q. If you would, if you turn over</p>
<p style="text-align: right;">648</p> <p>1 A. Yes.</p> <p>2 Q. All right. Now, if, in fact, the</p> <p>3 USEM exports that's being referred here</p> <p>4 increased the domestic Urner Barry market, Rose</p> <p>5 Acre would directly benefit from that; correct,</p> <p>6 sir?</p> <p>7 MR. MONICA: Objection. Calls for</p> <p>8 speculation and expert testimony. You may</p> <p>9 answer.</p> <p>10 THE WITNESS: I don't agree with</p> <p>11 what's written here.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. If you could read my question, I</p> <p>14 ask you to answer my question, sir.</p> <p>15 (The record was read as</p> <p>16 requested.)</p> <p>17 MR. MONICA: Same objection. You</p> <p>18 can answer.</p> <p>19 THE WITNESS: I don't agree.</p> <p>20 There are too many factors that affect the egg</p> <p>21 market, so I can't agree with this.</p> <p>22 BY MR. STUEVE:</p>	<p style="text-align: right;">650</p> <p>1 under USEM exports, Larry Seger is referenced</p> <p>2 there; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And, again, he was an egg</p> <p>5 producer; is that right?</p> <p>6 A. Correct.</p> <p>7 Q. And the chair of USEM export?</p> <p>8 A. Yes. He was.</p> <p>9 Q. It states, Larry Seger and Phyllis</p> <p>10 Blizzard, she would have been working for UEP;</p> <p>11 is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Provided a report and assessment</p> <p>14 of the November export and the one currently</p> <p>15 being filled in January. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. A graph was presented showing the</p> <p>18 November export had increased egg prices by</p> <p>19 about \$0.15 during November and December. Do</p> <p>20 you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Now, if, in fact, that occurred,</p>

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<p style="text-align: right;">651</p> <p>1 Rose Acre would directly benefit from that; 2 right, sir?</p> <p>3 MR. MONICA: Objection. Posed a 4 hypothetical question. Calls for speculation. 5 You can answer.</p> <p>6 THE WITNESS: Yeah. The -- I 7 wasn't -- I wasn't even a part of this meeting 8 and that statement I don't necessarily agree 9 with.</p> <p>10 BY MR. STUEVE: 11 Q. Now, sir, Rose Acre would not have 12 been participating in these exports unless they 13 believed it was going to directly benefit them; 14 right?</p> <p>15 MR. MONICA: Objection. Vague. 16 THE WITNESS: No. I don't agree 17 with that.</p> <p>18 BY MR. STUEVE: 19 Q. In fact, each of the exports that 20 Rose Acre participated in, the actual eggs that 21 it utilized, it incurred a loss as a result of 22 that; right, sir?</p>	<p style="text-align: right;">653</p> <p>1 You can answer.</p> <p>2 THE WITNESS: I sell a lot of eggs 3 off the Urner Barry market; correct. I sell a 4 lot of shell eggs off the Urner Barry market. 5 BY MR. STUEVE: 6 Q. Show you what's been marked as 7 Exhibit 181. Did you review this document in 8 preparation of your testimony in response to 9 22G?</p> <p>10 A. No. I didn't. 11 Q. If you would, on the first page, 12 it has Rose Acre and it has the list of its 13 layers; is that right?</p> <p>14 A. Yes. 15 Q. And did that number 20 million 16 586, did that include all of the layers from the 17 15 or so Rose Acre production facilities in 18 February 2007?</p> <p>19 A. Well, in 2007, I don't think -- we 20 didn't have 15. I would have to look at our 21 list of farms by years. But it relatively looks 22 like it includes all of our birds.</p>
<p style="text-align: right;">652</p> <p>1 MR. MONICA: Objection. 2 THE WITNESS: No. I don't agree 3 with that.</p> <p>4 BY MR. STUEVE: 5 Q. And the reason why it was willing 6 to take a loss with respect to the eggs it 7 committed to the USEM export is that the boost 8 in overall egg prices would far outweigh the 9 cost of participating in the transaction for 10 Rose Acre; is that correct?</p> <p>11 MR. MONICA: Object to the form of 12 the question. You can answer.</p> <p>13 THE WITNESS: No. I don't agree 14 with that.</p> <p>15 BY MR. STUEVE: 16 Q. As the second largest egg producer 17 in the country during this time period, if the 18 Urner Barry market prices go up, Rose Acre is 19 directly benefiting from that because, as you 20 testified yesterday, many of your contracts are 21 based on the Urner Barry market; right, sir? 22 MR. MONICA: Object to the form.</p>	<p style="text-align: right;">654</p> <p>1 Q. And that would have been 2 information that Rose Acre would have provided 3 USEM; correct, sir?</p> <p>4 A. Yes. 5 Q. And the percentage total, the next 6 column is the allocation of the export; correct?</p> <p>7 A. It appears to be. I've never seen 8 this document before, but, yes, that's what it 9 appears to be.</p> <p>10 Q. And if you look from the top to 11 the bottom here, and over to the next page, 12 you'll note that Cal-Maine Foods, four down, was 13 allocated 16.28 percent. Do you see that?</p> <p>14 A. Yes. 15 Q. And, number two was Rose Acre at 16 14.685 percent; is that right?</p> <p>17 A. Yes. 18 Q. And then there's a significant 19 drop off after that; is that right, sir?</p> <p>20 A. The next one appears to be 4.8. 21 Q. Getting Rose Acre to join USEM was 22 a significant boost to the export program;</p>

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<p style="text-align: right;">655</p> <p>1 wasn't it, sir?</p> <p>2 MR. MONICA: Object to the form of</p> <p>3 the question.</p> <p>4 THE WITNESS: I can't speculate on</p> <p>5 that.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Looking at the numbers, it's</p> <p>8 pretty self-evident; isn't it?</p> <p>9 MR. MONICA: Object to the form of</p> <p>10 the question.</p> <p>11 THE WITNESS: I'm not going to</p> <p>12 speculate on that.</p> <p>13 BY MR. STUEVE:</p> <p>14 Q. If you look at the totals there,</p> <p>15 you'll see that they calculated -- you'll see</p> <p>16 the notations, the total loss was 946,389 or</p> <p>17 \$0.59 a dozen. Do you see that?</p> <p>18 MS. REDDING: Objection.</p> <p>19 Mischaracterizing the document.</p> <p>20 MR. MONICA: I'll join in the</p> <p>21 objection.</p> <p>22 THE WITNESS: I don't -- I've</p>	<p style="text-align: right;">657</p> <p>1 MR. MONICA: Object to the form of</p> <p>2 the question.</p> <p>3 THE WITNESS: I can't confirm</p> <p>4 that.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. Why don't you look at -- if you</p> <p>7 look at active feed company 854, that is the</p> <p>8 cases purchased and then it has percentage of</p> <p>9 loss. Do you see that?</p> <p>10 A. It says percent of loss.</p> <p>11 Q. But for everyone that purchased</p> <p>12 that's listed in the second to last column on</p> <p>13 the right side, they all have losses allocated</p> <p>14 to them; correct, sir?</p> <p>15 MR. MONICA: Objection.</p> <p>16 MS. REDDING: Objection.</p> <p>17 Foundation.</p> <p>18 THE WITNESS: I said I don't know</p> <p>19 what the percent of loss. I don't understand</p> <p>20 that.</p> <p>21 BY MR. STUEVE:</p> <p>22 Q. But there is a number that's</p>
<p style="text-align: right;">656</p> <p>1 never seen this document, so I can't -- I'm not</p> <p>2 going to confirm unless I have a better</p> <p>3 understanding of it.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. If you look up here, percentage of</p> <p>6 loss. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And it has the -- it has the</p> <p>9 percentage, and then over on the -- it has the</p> <p>10 total loss is 946,389. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Now, if you go back to Rose Acre,</p> <p>13 it's not in -- it doesn't have a percentage of</p> <p>14 loss, because it would have filled its order</p> <p>15 through its own eggs; correct?</p> <p>16 A. According to this document, we did</p> <p>17 not purchase any eggs.</p> <p>18 Q. Right. But those who did, the</p> <p>19 difference between what they were going to get</p> <p>20 paid by USEM and what they had to buy on the</p> <p>21 open market, they all incurred losses; correct,</p> <p>22 sir?</p>	<p style="text-align: right;">658</p> <p>1 under -- under that column and that -- there's a</p> <p>2 number for each of the egg producers who</p> <p>3 purchased cases; correct?</p> <p>4 MR. MONICA: Objection. Vague.</p> <p>5 THE WITNESS: There is a number in</p> <p>6 the percent of loss column, next to the cases</p> <p>7 purchased. Yes.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Now, Rose Acre packed</p> <p>10 35,729 cases; is that right?</p> <p>11 A. That's what it says here.</p> <p>12 Q. And there are 30 dozen eggs; is</p> <p>13 that correct, in a case?</p> <p>14 A. Not always. No. We pack a lot of</p> <p>15 15 dozen cases.</p> <p>16 Q. Do you recall whether your cases</p> <p>17 that you packed here were the 30 dozen?</p> <p>18 A. No. I don't recall, without</p> <p>19 looking at the records. I don't see anywhere</p> <p>20 that states for sure if it's full cases or half</p> <p>21 cases.</p> <p>22 Q. If they were full cases, would</p>

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<p style="text-align: right;">659</p> <p>1 that be 30 dozen, sir?</p> <p>2 A. A full case is 30 dozen, yes.</p> <p>3 Q. If you took 35,729 cases and you</p> <p>4 multiply that times 30 dozen and you multiply</p> <p>5 that by \$0.59 a dozen, that would be a loss</p> <p>6 attributable to Rose Acre of 631,415; is that</p> <p>7 correct, sir?</p> <p>8 MR. MONICA: Object to the form of</p> <p>9 the question. Mischaracterizes this document.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. Go ahead and answer the question,</p> <p>12 sir.</p> <p>13 A. No. It's not.</p> <p>14 MR. STUEVE: We need to change the</p> <p>15 videotape.</p> <p>16 MR. MONICA: Take a five minute --</p> <p>17 THE VIDEOGRAPHER: The time is</p> <p>18 approximately 2:18 p.m. We're going off the</p> <p>19 record.</p> <p>20 (A brief recess was taken.)</p> <p>21 THE VIDEOGRAPHER: Standby. This</p> <p>22 is the start of media unit number five. The</p>	<p style="text-align: right;">661</p> <p>1 MR. MONICA: Can I see the</p> <p>2 calculator, please?</p> <p>3 BY MR. STUEVE:</p> <p>4 Q. If Rose Acre incurred a loss of</p> <p>5 630,000 to participate in that export, it</p> <p>6 obviously was convinced that the overall benefit</p> <p>7 resulting from that export would outweigh that</p> <p>8 cost; correct, sir?</p> <p>9 MR. MONICA: Objection.</p> <p>10 Misconstrues the document. Misstates the nature</p> <p>11 of their involvement in USEM. Vague. Compound.</p> <p>12 Calls for speculation. Hypothetical. You can</p> <p>13 answer it.</p> <p>14 THE WITNESS: I don't agree with</p> <p>15 your statement.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. Let me show you --</p> <p>18 MR. MONICA: I'm sorry. Can we</p> <p>19 give the phone back to you?</p> <p>20 MR. STUEVE: Yes. Thank you.</p> <p>21 Actually, David thanks you.</p> <p>22 MR. MONICA: Nice phone, by the</p>
<p style="text-align: right;">660</p> <p>1 time is 2:25 p.m. We are back on the record.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. So, Mr. Hinton, we are back on the</p> <p>4 record. I'm going to give you a calculator,</p> <p>5 it's an iPhone. Could you grab that for me.</p> <p>6 Could you type in 35,729 for the</p> <p>7 number of cases?</p> <p>8 MR. MONICA: I'm just going to put</p> <p>9 on the record, I generally object to having the</p> <p>10 witness do math. I'm going to let him go ahead</p> <p>11 and do it if he wants to do it. So go ahead.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Type that in?</p> <p>14 A. 35,000.</p> <p>15 Q. 729 cases. Do you have that</p> <p>16 number? Okay. Can you multiply that times 30?</p> <p>17 A. Okay.</p> <p>18 Q. And then multiply that times</p> <p>19 \$0.59. And what does that give you, sir?</p> <p>20 A. That number is 632,403.03.</p> <p>21 Q. 632,402?</p> <p>22 A. 03 and \$0.30.</p>	<p style="text-align: right;">662</p> <p>1 way.</p> <p>2 (Exhibit Number 583 was marked for</p> <p>3 identification.)</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. Show you what's been marked as</p> <p>6 Exhibit 583. If you could keep that other</p> <p>7 exhibit in front of you for a moment, 581. 583</p> <p>8 is RA 0002299 through 06. That is the United</p> <p>9 Voices newsletter from UEP dated April 27, 2007;</p> <p>10 is that correct, sir?</p> <p>11 A. Yes.</p> <p>12 Q. And this would have come from your</p> <p>13 file, you believe?</p> <p>14 A. Rose Acre's produced it. I</p> <p>15 believe so.</p> <p>16 Q. And if you look here, April 27,</p> <p>17 2007 is a couple months after Exhibit 181, the</p> <p>18 reference to the February 2007 export; is that</p> <p>19 correct?</p> <p>20 A. April -- that would be two months</p> <p>21 after February 2007; correct.</p> <p>22 Q. That February 2007 is Exhibit 181</p>

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<p style="text-align: right;">663</p> <p>1 the export we were looking at; is that correct,</p> <p>2 sir?</p> <p>3 A. Yes. 181 is February 2007.</p> <p>4 Q. And that is the export we were</p> <p>5 just talking about; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And if you now look at 583, the</p> <p>8 United Egg Voices two months later states, in</p> <p>9 that last paragraph, the last sentence, within a</p> <p>10 few days of the latest export announcement, the</p> <p>11 market moved up a dollar 8, a \$0.17 increase and</p> <p>12 higher prices are expected as we attempt to find</p> <p>13 eggs to fill the market. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And that's why Rose Acre would</p> <p>16 participate in that export and incur that loss,</p> <p>17 because a \$0.17 increase would result in a</p> <p>18 benefit far outweighing a 632,000 loss; correct,</p> <p>19 sir?</p> <p>20 MR. MONICA: Object to the form of</p> <p>21 the question.</p> <p>22 THE WITNESS: No. I don't agree</p>	<p style="text-align: right;">665</p> <p>1 2007. Marcus Rust participated in that; is that</p> <p>2 correct, sir?</p> <p>3 THE WITNESS: Yes. His name's</p> <p>4 here.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. And under the motion, do you see</p> <p>7 that in bold?</p> <p>8 A. Yes.</p> <p>9 Q. It says, it was moved by Elste and</p> <p>10 seconded by Rust to offer Shevi 63 loads at 60</p> <p>11 cents and Fuchs 100 loads at \$0.60. Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. So that's referring to the export</p> <p>15 committee's vote on the motion seconded by Rust</p> <p>16 to execute on two exports; is that correct?</p> <p>17 MR. MONICA: Objection.</p> <p>18 THE WITNESS: Could you repeat the</p> <p>19 question, please?</p> <p>20 (The record was read as</p> <p>21 requested.)</p> <p>22 THE WITNESS: Read that one more</p>
<p style="text-align: right;">664</p> <p>1 with that statement.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. In fact, this UEP communication</p> <p>4 further confirms what the purpose of the USEM</p> <p>5 exports were, which is to reduce the domestic</p> <p>6 egg supply and boost domestic egg prices;</p> <p>7 correct, sir?</p> <p>8 MR. MONICA: Object. Object to</p> <p>9 the form of the question.</p> <p>10 THE WITNESS: No. I do not agree</p> <p>11 with that.</p> <p>12 THE REPORTER: Did we mark 582?</p> <p>13 MR. MONICA: I don't believe we</p> <p>14 did.</p> <p>15 MR. STUEVE: We're going to get to</p> <p>16 582 next.</p> <p>17 (Exhibit Number 582 was marked for</p> <p>18 identification.)</p> <p>19 MR. STUEVE: Let me show you</p> <p>20 what's been marked as Exhibit 582. This is</p> <p>21 Bates range UE 0317733. This is the minutes of</p> <p>22 the United States Egg Marketers of August 9,</p>	<p style="text-align: right;">666</p> <p>1 time, please.</p> <p>2 (The record was read as</p> <p>3 requested.)</p> <p>4 THE WITNESS: Can you define</p> <p>5 execute?</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. After this motion was carried</p> <p>8 unanimously, the Export Committee agreed that</p> <p>9 USEM should execute on two exports. One, to</p> <p>10 Shevi of 63 loads at \$0.60 and the second to</p> <p>11 Fuchs of 100 loads at \$0.60; is that correct?</p> <p>12 A. I don't agree with your definition</p> <p>13 of execute.</p> <p>14 Q. Okay. What did you understand --</p> <p>15 let me ask it this way.</p> <p>16 The motion was moved by Elste</p> <p>17 seconded by Marcus Rust; right?</p> <p>18 A. Correct.</p> <p>19 Q. What did you understand the motion</p> <p>20 to approve?</p> <p>21 A. Okay. My understanding, reading</p> <p>22 the motion, is that the motion made by Elste and</p>

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<p style="text-align: right;">667</p> <p>1 seconded by Rust was directing the USEM staff to 2 make an offer by Shevi and Fuchs for these eggs. 3 Q. And -- 4 A. Looking at this, I can't tell you 5 the export -- I would use execute that it 6 happened. Offer means they were directing the 7 staff to make an offer to them, is how I would 8 interpret it. 9 Q. Let's look up above here. Maybe 10 that will clarify. 11 Staff reported that only two 12 buyers had made bids at \$0.60 or better and 13 provided the following details? 14 A. Okay. 15 Q. Michael Shevi had bid \$0.60 per 16 dozen for 63 container loads. Do you see that? 17 A. Yes. 18 Q. And then Jürgen Fuchs had amended 19 his bid to \$0.61 per dozen for 100 container 20 loads; right? 21 A. Yes. 22 Q. It says, after a period of</p>	<p style="text-align: right;">669</p> <p>1 what I'm stating. 2 (Exhibit Number 584 was marked for 3 identification.) 4 BY MR. STUEVE: 5 Q. Let me show you 584. And if you 6 would, this is the Urner Barry egg quote for 7 Thursday, August 9, 2007. And if you could 8 compare that to the August 9, 2007, United 9 States Egg Marketers Committee conference call 10 minutes? 11 MS. REDDING: Can we get the Bates 12 number, please? 13 MR. STUEVE: There is no Bates -- 14 actually, there is a Bates range, I'm sorry. 15 It's MFI 0136751. 16 BY MR. STUEVE: 17 Q. So this -- if -- we'll get to it, 18 but assuming this offer were accepted by Shevi 19 and Fuchs, as outlined in the motion, all -- 20 using the Urner Barry quote of August 9, 2007, 21 which is the same date, it was understood that 22 this export would result in a loss to the egg</p>
<p style="text-align: right;">668</p> <p>1 discussion, it was determined that since Michael 2 Shevi was the first to meet our price 3 requirement, we should give him the first 4 opportunity to purchase the 63 loads. It was 5 also suggested that we also offer Fuchs up to 6 100 loads at the same price. Do you see that? 7 A. Yes. 8 Q. So they then move on that there's 9 a motion seconded by Rust to actually execute 10 the transaction; correct? 11 MR. MONICA: Objection. 12 THE WITNESS: It was to make the 13 offer, but this document doesn't state that the 14 offer was accepted. 15 BY MR. STUEVE: 16 Q. But it would indicate, though, 17 from this document that that was a foregone 18 conclusion based on the bids by Shevi and Fuchs; 19 correct? 20 MR. MONICA: Objection. 21 THE WITNESS: Not until the offer 22 was accepted. This was to make an offer, is</p>	<p style="text-align: right;">670</p> <p>1 producers who would participate; correct, sir? 2 MR. MONICA: Object to the form of 3 the question. 4 THE WITNESS: I don't know that. 5 I don't know the producers you're referring to, 6 I don't know their cost. 7 BY MR. STUEVE: 8 Q. Well, if we look at the Urner 9 Barry quote, let's look at the 30 loads for 10 graded large eggs. Do you see that? It says, 11 the reference for Jürgen Fuchs, 30 loads of 12 graded large/extra large? Do you see that in 13 the bullet point there? 14 A. I'm sorry. Where? 15 Q. On Exhibit 582, do you see that, 16 under second bullet point, graded large/extra 17 large, do you see that reference, 30 loads? 18 A. Yes. 19 Q. If you look over on Urner Barry 20 quote for that day, the various Urner Barry 21 markets had the large from \$1.09, \$1.06, \$1.09, 22 and \$1.11; is that correct, sir?</p>

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<p style="text-align: right;">671</p> <p>1 MR. MONICA: Objection. Misreads 2 the document. 3 THE WITNESS: Repeat the question, 4 please. 5 (The record was read as 6 requested.) 7 MR. MONICA: Objection. 8 THE WITNESS: The -- looking at 9 this Urner Barry market report, the large Urner 10 Barry market has been reported as a \$1.09, 11 \$1.06, \$1.09, and \$1.11 for their respective 12 markets on that day; correct. 13 BY MR. STUEVE: 14 Q. Then if you look at the extra 15 large, it is \$1.15, \$1.12, \$1.15, and \$1.17; is 16 that correct? 17 A. The Urner Barry market reports on 18 August 9th for extra large \$1.15, Northeast, 19 \$1.12, Midwest, \$1.15 in the Southeast, \$1.17 in 20 the South Central. 21 Q. And then if you look at the 22 reference to the 70 loads of nest run. Do you</p>	<p style="text-align: right;">673</p> <p>1 A. I believe it was -- in 2007, my -- 2 the sales department has access to it and then 3 Marcus would also have access to it. 4 Q. Marcus Rust? 5 A. Yes. 6 Q. The representative of Rose Acre 7 that seconded the motion for this August 9, 2007 8 export; is that correct? 9 A. For that offer; correct. 10 Q. Now, keep Exhibit 582 in front of 11 you. 12 A. Okay. 13 Q. If you would, keep that document, 14 keep 582 out in front of you. Then I also need 15 you to get back out Exhibit 48. That's this 16 document here, remember the USEM export summary? 17 A. Okay. 18 Q. And if you would, under the export 19 for 2007 reference there in Exhibit 48, do you 20 see that, on Bates number, the last three is 34? 21 Do you see that there? 22 A. Yes.</p>
<p style="text-align: right;">672</p> <p>1 see that in the second bullet point there? 2 A. Yes. 3 Q. You look over on Urner Barry, 4 the -- do you see the standard 48 to 50 pounds? 5 A. Yes. 6 Q. That price is from 70, 72, 70 and 7 72; is that correct? 8 A. On this report, the standard 48 to 9 50 nest run breaking stock is reported as a low 10 of 72 and 72, the high in the East, and 70 and 11 72 -- 72 low, 75 high in the South -- in the 12 Central; correct. 13 Q. Now, the 42 pound and the 50 14 pound; is that correct, that are listed there? 15 A. Yes. 42 to 44 and then 50 and up. 16 Q. Did Rose Acre have access to the 17 Urner Barry daily quotes? 18 A. Yes. We do. 19 Q. And who would have access to that 20 at Rose Acre? 21 A. Today -- in 2007? 22 Q. Yeah. August of 2007?</p>	<p style="text-align: right;">674</p> <p>1 Q. And this is the export 8/22 to 2 9/13 of 2007; is that correct? 3 A. Sorry. What was the question? 4 Q. This is an export that has the 5 date 8/22 to September 13th, '07; is that 6 correct? 7 A. Yes. 8 Q. That would immediately follow the 9 Export Committee's conference call; is that 10 right, of August 9th? 11 A. Yes. 12 MS. REDDING: Objection. Calls 13 for speculation. 14 BY MR. STUEVE: 15 Q. Now, if you would -- if you would, 16 the last -- on that same indication, there's 17 week 9/10. Do you see that, on the bottom line 18 there? It has week 9/10, 34 loads. Do you see 19 that? 20 A. No. 21 Q. Okay. I'm sorry. Under export 22 2007, August to September 13th, '07, that</p>

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69 (Pages 675 to 678)

<p style="text-align: right;">675</p> <p>1 section there, the bottom line there lists the 2 amount of the loads and the week. Do you see 3 that? 4 A. Okay. Yes. 5 Q. And if you look at the last week, 6 September 10th of 2007, 34 loads; right? 7 A. Yes. 8 Q. Now, let me show you what's been 9 marked as Exhibit 585? 10 (Exhibit Number 585 was marked for 11 identification.) 12 MR. MONICA: He's got three in 13 front of him already. Do you want four in front 14 of him? 15 MR. STUEVE: Yep. Just 585. He 16 doesn't need that other Urner Barry. You can 17 place that -- so Exhibit 585, do you have that 18 in front of you now? 19 THE WITNESS: Yes. 20 BY MR. STUEVE: 21 Q. If you looked for the week -- it's 22 Monday, September 10th; right?</p>	<p style="text-align: right;">677</p> <p>1 A. That's what's stated here. 2 Q. And then with respect to the Class 3 1, it's \$0.60; right? 4 A. For which one? 5 Q. The 14 loads, Class 1, \$0.60? 6 A. That's what's stated there; 7 correct. 8 Q. On September 10th, what was the 9 Class 1, if you use breaking stock, nest run off 10 the Urner Barry, the standard 48 to 50 pounds 11 it's 80, 82, 80 and 82; is that correct? 12 MR. MONICA: Objection. 13 THE WITNESS: You're referring to 14 the Urner Barry market quote for Monday, 15 September 10th. 16 BY MR. STUEVE: 17 Q. Yes. 18 A. Nest run breaking stock. 19 Q. Right. 20 A. Standard 48 to 50 pound is 21 reported as \$0.80 low, \$0.82 high for eastern, 22 and \$0.80 low and \$0.82 high for Central.</p>
<p style="text-align: right;">676</p> <p>1 A. Yes. 2 Q. It has -- you'll see for extra 3 large and large white. Do you see that? It has 4 for extra large, \$1.45, \$1.42, \$1.45, and \$1.46; 5 right? 6 A. For extra large, correct. 7 Q. Large is \$1.37, \$1.34, \$1.37 and 8 \$1.38; correct? 9 A. Correct. 10 Q. If you look at the UEP summary of 11 the export in August through September of '07, 12 the bid price is \$0.60 for extra large and 13 large; correct, sir? 14 A. I'm sorry. Can you repeat that? 15 Q. Yeah. The price that USEM was 16 being paid by Jürgen Fuchs was \$0.60; right, for 17 extra large and large? 18 A. Like I said, I haven't seen this 19 document. That's what this appears to be. 20 Q. All right. And then if you look 21 at the extra large, the 23 loads there, it's 22 also \$0.60 being paid by Jürgen Fuchs; correct?</p>	<p style="text-align: right;">678</p> <p>1 Q. Now, if you could, keep 48 in 2 front of you, and keep it turned to the August 3 to September '07 export that we were looking at? 4 A. Okay. 5 Q. I'll show you what's been marked 6 as 586. 7 (Exhibit Number 586 was marked for 8 identification.) 9 MS. REDDING: Can we get the Bates 10 number, please? 11 MR. STUEVE: UE 0095810 through 12 5811. Up at the top, it has export case volume 13 August through September 2007; right? 14 THE WITNESS: Oh. Yes. 15 BY MR. STUEVE: 16 Q. And that's the same timeframe 17 that's referenced in Exhibit 48, summary of the 18 export of August 22nd through September 13, 19 2007; correct? 20 MR. MONICA: Objection. 21 THE WITNESS: I've never seen this 22 document before, but it -- it has the same date</p>

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70 (Pages 679 to 682)

<p style="text-align: right;">679</p> <p>1 as far as months.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. And the allocation of the</p> <p>4 commitment to Rose Acre is the largest of any</p> <p>5 egg producer; correct?</p> <p>6 A. As stated in this document, yes.</p> <p>7 Q. The second largest is Cal-Maine;</p> <p>8 right?</p> <p>9 A. On this document. Yes.</p> <p>10 Q. Then there's a significant drop</p> <p>11 off after Rose Acre and Cal-Maine with respect</p> <p>12 to the commitments of the other egg producers;</p> <p>13 correct, sir?</p> <p>14 A. Rose Acre at 13.9394 and Cal-Maine</p> <p>15 at 12.5366 and the next one is 4.6045.</p> <p>16 Q. And if you would, under Rose Acre</p> <p>17 it indicates that Rose Acre's commitment is</p> <p>18 15,069; is that right?</p> <p>19 A. That's what's stated here.</p> <p>20 Q. Do you understand that to be</p> <p>21 cases?</p> <p>22 A. It's not labeled cases, but</p>	<p style="text-align: right;">681</p> <p>1 Q. It's my last one.</p> <p>2 A. Do I get to keep the phone?</p> <p>3 MR. HICKEY: No.</p> <p>4 THE WITNESS: Okay. What would</p> <p>5 you like me to do?</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. If you typed in the commitment</p> <p>8 number of 15,069?</p> <p>9 A. 15,000.</p> <p>10 Q. 69, representing the number of</p> <p>11 cases, times 30, representing 30 dozen per case,</p> <p>12 times \$0.60, representing the loss per dozen,</p> <p>13 what number does that give you?</p> <p>14 MR. MONICA: Objection.</p> <p>15 THE WITNESS: The numbers you</p> <p>16 asked me to type in?</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. Yeah.</p> <p>19 A. Come to 271,242.</p> <p>20 MR. MONICA: May I see the</p> <p>21 calculator, please?</p> <p>22 (Exhibit Number 587 was marked for</p>
<p style="text-align: right;">680</p> <p>1 it's --</p> <p>2 Q. Would that be your assumption,</p> <p>3 sir?</p> <p>4 A. Yes.</p> <p>5 Q. And then, again, if it's a full</p> <p>6 case that would be 30 dozen a case; right?</p> <p>7 A. If it's a full case; correct.</p> <p>8 Q. If you would, on the second page</p> <p>9 over under the loss column, there's a</p> <p>10 handwritten notation of \$0.60 a dozen; right?</p> <p>11 A. I -- there's a notation</p> <p>12 handwritten, it says \$0.60 a dozen; correct.</p> <p>13 Q. And, again, ask you to do some</p> <p>14 math here.</p> <p>15 MR. MONICA: Well, why don't you</p> <p>16 tell us what the number is.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. I just want him to confirm it.</p> <p>19 This is my last one.</p> <p>20 MR. MONICA: If it's your last</p> <p>21 one, go ahead.</p> <p>22 BY MR. STUEVE:</p>	<p style="text-align: right;">682</p> <p>1 identification.)</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. I'll show you what's been marked</p> <p>4 as Exhibit 587.</p> <p>5 This is an e-mail by Phyllis</p> <p>6 Blizzard of UEP to several folks, including</p> <p>7 Marcus Rust; is that right?</p> <p>8 MS. REDDING: Can I get the Bates</p> <p>9 number, please?</p> <p>10 MR. STUEVE: Bates range RA</p> <p>11 0042370.</p> <p>12 THE WITNESS: I'm looking. Yes.</p> <p>13 I see it. Yes.</p> <p>14 BY MR. STUEVE:</p> <p>15 Q. Okay. And do you know whose files</p> <p>16 at Rose Acre this document came from?</p> <p>17 A. It would have been in the sales --</p> <p>18 in my office.</p> <p>19 Q. And this August 24, 2007, again,</p> <p>20 is the timeframe of the export that we have been</p> <p>21 discussing that was referenced in Exhibit 48, as</p> <p>22 well as Exhibit 586; correct, sir?</p>

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71 (Pages 683 to 686)

<p style="text-align: right;">683</p> <p>1 A. It would have been the same 2 timeframe; correct. 3 Q. It says, will you please forward 4 this message on to the USEM members. We have 5 two export customers for which we are committed 6 to deliver all eggs by a certain date. Our 7 first deadline is September 6th and the next is 8 September 12th. Do you see that? 9 A. Yes. 10 Q. It is my understanding that we are 11 still in need of as many as 30 container loads, 12 which I have no commitments for and we must 13 purchase. It is also my understanding that we 14 are offering premiums as high as \$0.15 for nest 15 run and \$0.20 or more for graded eggs and still 16 getting no one to sell us eggs. Do you see 17 that? 18 A. Yes. 19 Q. If you go on down there it says, 20 the market has already risen by nearly \$0.20 per 21 dozen since the export was announced. Maybe the 22 export has contributed to some of this gain. Do</p>	<p style="text-align: right;">685</p> <p>1 Q. And under Rose Acre, Rose Acre was 2 allocated the highest amount, its commitment 3 with respect to this export; is that correct, 4 15.89? 5 A. I wasn't familiar with this 6 document, but on this document, it does state we 7 had a 15.8959 percent. 8 Q. That would be the highest 9 percentage allocation; correct, sir? 10 A. On this document. Yes. 11 Q. And the next closest would be 12 Cal-Maine Foods at 11.5 percent; is that right? 13 A. Yes. 11.5575; correct. 14 Q. Then there's a significant drop 15 off after that; is that correct? 16 A. The next one on this document is 17 4.3444 percent. 18 (Exhibit Number 589 was marked for 19 identification.) 20 BY MR. STUEVE: 21 Q. Show you what's been marked as 22 Exhibit 589, and the Bates range here is UE</p>
<p style="text-align: right;">684</p> <p>1 you see that? 2 A. Yes. 3 Q. Okay. Do you remember reviewing 4 this document at the time? 5 A. No. I don't remember it. 6 (Exhibit Number 588 was marked for 7 identification.) 8 BY MR. STUEVE: 9 Q. Show you what's been marked 10 Exhibit 588, and the Bates range is UE 0457968 11 through 71. If you look up in the upper 12 right-hand corner, it's June '08 sale. Do you 13 see that? 14 A. Yes. 15 Q. And if you look on Exhibit 48, the 16 first page? 17 A. Okay. 18 Q. On the first page? 19 A. Oh. Okay. 20 Q. Is there a reference there to a 21 May 21st through June 24th, '08 export? 22 A. Yes.</p>	<p style="text-align: right;">686</p> <p>1 0316921 to 22. Do you see that? 2 A. Yes. 3 Q. And under this export total of 120 4 containers, Rose Acre's allocation is 5 15.73 percent; is that right? 6 A. Yeah. I haven't seen this before, 7 but on this document, it says Rose Acre is 8 15.7359 percent. 9 Q. And then the next highest 10 percentage is Cal-Maine Foods at 11.4; is that 11 right? 12 A. Yes. 11.4411. 13 Q. And then there's a significant 14 drop off after that; is that correct, sir? 15 A. The next one was 4.3007. 16 (Exhibit Number 590 was marked for 17 identification.) 18 BY MR. STUEVE: 19 Q. Show you what's been marked as 20 Exhibit 590. It's Bates range UE 0526344 21 through 46. And this is to Marcus Rust at Rose 22 Acre from Gene Gregory; is that right?</p>

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72 (Pages 687 to 690)

<p style="text-align: right;">687</p> <p>1 A. Yes. Appears to be.</p> <p>2 Q. And if you turn to the second page</p> <p>3 of the document, there's a date up at the top of</p> <p>4 August 1, 2008, and there's a confirmation of</p> <p>5 export, delivery or purchase. So you have to</p> <p>6 indicate whether your company will deliver or</p> <p>7 purchase for delivery a pro rata share of this</p> <p>8 export order. Our company requests UEP traders</p> <p>9 purchase our pro rata share. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And do you recall filling a</p> <p>12 document like this out in relation to USEM</p> <p>13 exports?</p> <p>14 A. To -- to this export?</p> <p>15 Q. Just in general, do you remember</p> <p>16 getting a document like this asking you to</p> <p>17 indicate whether you're going to fill your pro</p> <p>18 rata share through delivery of your own eggs or</p> <p>19 purchasing eggs?</p> <p>20 A. I've seen a document like this</p> <p>21 before. Yes.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">689</p> <p>1 \$1.18 and the average price we have to pay to</p> <p>2 purchase all the eggs in the pool. Do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. So we were looking at earlier, if</p> <p>6 UEP has to pay, for example, \$1.25 a dozen to</p> <p>7 meet the USEM member's export requirement, that</p> <p>8 USEM member would have to pay the difference</p> <p>9 between those two numbers; is that correct?</p> <p>10 MR. MONICA: Object to the form of</p> <p>11 the question.</p> <p>12 THE WITNESS: My understanding</p> <p>13 it's not directed towards each member, it's a</p> <p>14 pool based on how many eggs UEP has to purchase</p> <p>15 for all the members.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. Purchase for those members who are</p> <p>18 requiring them to purchase; is that right?</p> <p>19 MR. MONICA: Objection.</p> <p>20 THE WITNESS: For members that</p> <p>21 required to be purchased.</p> <p>22 BY MR. STUEVE:</p>
<p style="text-align: right;">688</p> <p>1 (Exhibit Number 591 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. STUEVE:</p> <p>4 Q. Show you what's been marked as</p> <p>5 Exhibit 591, it's Bates range RAFKS 0011622.</p> <p>6 Would this have come from your files, sir?</p> <p>7 A. Yes. From the sales office.</p> <p>8 Q. And it's dated up here, August 29,</p> <p>9 2012; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And it lists in the second</p> <p>12 paragraph there that your percentage share of</p> <p>13 the second export order is 18,034 cases based on</p> <p>14 information from your most recent membership</p> <p>15 agreement, this makes your total for 200 load</p> <p>16 export to be 36,068 cases. Did I read that</p> <p>17 correctly?</p> <p>18 A. Yes.</p> <p>19 Q. Then at the bottom, it says, for</p> <p>20 those requesting UEP to purchase their</p> <p>21 commitment in the open market, you will be</p> <p>22 invoiced the difference between sale price of</p>	<p style="text-align: right;">690</p> <p>1 Q. Right. And so if it's having you</p> <p>2 purchase -- if it's having to pay a higher</p> <p>3 purchase price for those members than the sales</p> <p>4 price to the foreign customer, there's going to</p> <p>5 be a loss incurred by all USEM members who are</p> <p>6 asking USEM to make their purchases; correct?</p> <p>7 MR. MONICA: Object to the term</p> <p>8 loss, counsel.</p> <p>9 THE WITNESS: Yeah. I don't agree</p> <p>10 with that.</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. Okay.</p> <p>13 (Exhibit Number 592 was marked for</p> <p>14 identification.)</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. Show you what's been marked as 592</p> <p>17 and the Bates range for 592 is UE 1028004</p> <p>18 through 15. The first page is redacted; is that</p> <p>19 correct, up at the top it says redacted?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. I want you to turn to the</p> <p>22 page that has the last two digits 10.</p>

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73 (Pages 691 to 694)

<p style="text-align: right;">691</p> <p>1 Actually, if you could turn to 14, 2 you'll see a reference to the August 12th sale, 3 200 containers. It says Rose Acre 23716014. 4 Its allocation of that export is 5 22.5427 percent; is that correct? 6 A. Yes, I'll state again I haven't 7 seen this, but on this document it says 22.5427 8 for Rose Acre. 9 Q. Up at the second -- the highest 10 percentage is Cal-Maine at 27.311; is that 11 right? 12 A. Yes. On this document, 27.3111. 13 Q. Then after Cal-Maine and Rose 14 Acre, there's a substantial drop off; correct, 15 sir? 16 A. The next one on this document is 17 6.2643. 18 Q. In fact, between Cal-Maine and 19 Rose Acre, almost 50 percent of the export is 20 being allocated to Rose Acre and Cal-Maine; 21 correct? 22 A. Yes. 49.8 percent.</p>	<p style="text-align: right;">693</p> <p>1 A. Yes. I do. 2 Q. Who would have purchased those 3 eggs? 4 A. Those eggs would have been 5 purchased by USEM. 6 Q. Okay. But sitting here today, you 7 just don't recall having a percentage of the 8 loss number of 192,628 being allocated to Rose 9 Acre? 10 MR. MONICA: Object to the form of 11 the question. 12 THE WITNESS: No. You asked me if 13 I lost -- no. We did not. 14 BY MR. STUEVE: 15 Q. Do you remember being allocated a 16 percentage of the loss of 192,628 by USEM? 17 MR. MONICA: Objection. 18 THE WITNESS: Can you repeat the 19 question, please? 20 BY MR. STUEVE: 21 Q. Sir, let me ask it this way. 22 Do you see on this document that</p>
<p style="text-align: right;">692</p> <p>1 Q. And on this one, it indicates that 2 you all requested that USEM purchase 14,198; is 3 that correct? 4 MR. MONICA: Object to the form of 5 the question. Mischaracterizes the document. 6 THE WITNESS: Could you repeat it, 7 please? 8 BY MR. STUEVE: 9 Q. Do you see the -- let me ask you 10 this. 11 Do you see the 192,628 under that 12 percentage of loss for Rose Acre? 13 A. Yes. I see that number. 14 Q. Do you recall incurring a loss of 15 192,628 in August of 2012 to participate in an 16 export for USEM? 17 MR. MONICA: Objection. 18 THE WITNESS: No. I don't. 19 BY MR. STUEVE: 20 Q. You don't -- do you remember 21 having to purchase eggs to fulfill that 22 requirement?</p>	<p style="text-align: right;">694</p> <p>1 was produced to us by UEP USEM, it says that the 2 percentage of the loss allocated to Rose Acre is 3 192,628. Do you see that? 4 MR. MONICA: Objection. 5 THE WITNESS: I see under the 6 column percentage of loss, under Rose Acre it 7 shows 192,628.09. 8 BY MR. STUEVE: 9 Q. Do you have any reason to doubt 10 the accuracy of this document, sir? 11 A. The accuracy -- I've never seen it 12 before. I don't even know who put it together. 13 Q. Okay. Do you recall USEM 14 notifying you with respect to the percentage of 15 the loss being allocated to Rose Acre of 192,628 16 for its purchases? 17 MR. MONICA: Objection. 18 THE WITNESS: I don't agree with 19 the statement, percentage of loss. 20 BY MR. STUEVE: 21 Q. Do you know what that number 22 reflects, sir, the 192,628?</p>

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74 (Pages 695 to 698)

<p style="text-align: right;">695</p> <p>1 A. Do I know what the number 2 reflects? 3 Q. Uh-huh. 4 A. I think it reflects -- without 5 talking to whoever prepared the document, my 6 thought would be it reflects a dollar amount 7 that they had to go out and buy eggs. 8 Q. You don't believe it's the 9 difference between the amount they had to buy 10 the eggs for on the open market and what they 11 got paid by the customer who was purchasing the 12 export? 13 A. Yes. It could be that. 14 MR. MONICA: Can we go off the 15 record for one second? 16 MR. STUEVE: Sure. 17 THE VIDEOGRAPHER: The time is 18 3:20 p.m. We are going off the record. 19 (A brief recess was taken.) 20 THE VIDEOGRAPHER: The time is 21 3:30 p.m. We are back on the record. 22 BY MR. STUEVE:</p>	<p style="text-align: right;">697</p> <p>1 percentage loss to Rose Acre that we just looked 2 at? 3 A. Which one? 4 Q. The one we just looked at. 5 MR. MONICA: The one produced by 6 United Egg. 7 THE WITNESS: By? 8 BY MR. STUEVE: 9 Q. It would be Exhibit 592. 10 A. No. They did not. 11 Q. I'll show you what's been marked 12 as Exhibit 563. This has previously been 13 marked. 14 Do you recall reviewing this 15 document in preparation for your deposition 16 today? 17 A. No. I did not. 18 Q. And with respect to 563, if you 19 could, it is dated November 25, 2002? 20 A. Yes. 21 Q. And it says, it was the opinion of 22 the Marketing Committee that with 213 million</p>
<p style="text-align: right;">696</p> <p>1 Q. If you could look at 517, topic 2 22H. You were designated on behalf of Rose Acre 3 to testify about your profits or losses from 4 each USEM export sale? 5 A. Yes. 6 Q. Is it fair to say based on your 7 prior testimony, you did not review your USEM 8 export file or any other file to prepare you to 9 respond to 22H? 10 MR. MONICA: Objection. 11 THE WITNESS: No, because I don't 12 have any USEM file that I could review that is 13 going to tell me exactly the proper loss. We 14 don't track that on USEM export sales. I 15 wouldn't have any documents that would show 16 that. 17 BY MR. STUEVE: 18 Q. Did you talk to Mr. Rust in 19 preparation for 22H? 20 A. No. I did not. 21 Q. And your counsel did not show you, 22 for example, the document that listed the</p>	<p style="text-align: right;">698</p> <p>1 layers now enrolled in the program, and this 2 representing nearly 100 percent of the shell 3 eggs needed to supply the shell egg markets, 4 that the quote should now be considered as an 5 animal care certified quote. Do you see that? 6 A. Yes. I do. 7 Q. Do you remember that being 8 discussed at the Marketing Committee in 9 November 2002? 10 A. I don't specifically remember. 11 No. 12 Q. And, if you would, on the last 13 page of Exhibit 563 -- excuse me, second to last 14 page, it lists you as a committee member 15 participating in the call on November 22nd? 16 A. Yes. It does. 17 Q. And then it also says in the next 18 paragraph down, that the committee further 19 recommended to UEP members and certified 20 companies that all animal husbandry certified 21 companies only purchase eggs from other 22 certified companies for their marketing of shell</p>

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75 (Pages 699 to 702)

<p style="text-align: right;">699</p> <p>1 eggs. Do you see that?</p> <p>2 A. Yes. I see that.</p> <p>3 Q. Do you remember that being</p> <p>4 discussed at the November 22nd Marketing</p> <p>5 Committee meeting that you participated in?</p> <p>6 A. No. I don't.</p> <p>7 Q. And this does not refresh your</p> <p>8 recollection?</p> <p>9 A. No, sir.</p> <p>10 Q. Show you what's been marked as</p> <p>11 Exhibit 185. This is a December 2nd, 2002,</p> <p>12 United Voices, so this would have been shortly</p> <p>13 after the November 22nd Marketing Committee</p> <p>14 meeting that you participated in; is that</p> <p>15 correct, sir?</p> <p>16 A. Yes.</p> <p>17 Q. And if you would, if you could</p> <p>18 turn to the Bates range 21, the last two digits,</p> <p>19 it's the third page?</p> <p>20 A. Which page?</p> <p>21 Q. The bottom two digits are 21.</p> <p>22 A. Okay.</p>	<p style="text-align: right;">701</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. Okay. Now, if you would, on 517,</p> <p>3 Exhibit 517, that's the Notice?</p> <p>4 A. Oh.</p> <p>5 Q. If you would, if you could turn to</p> <p>6 topic 32. It says, any communications between</p> <p>7 you and any attorney regarding the legality of</p> <p>8 your activities under Federal or State antitrust</p> <p>9 laws. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. I believe Mr. Hinton has been</p> <p>12 designated for that topic; is that correct?</p> <p>13 MR. MONICA: He's been designated,</p> <p>14 but he's going to be instructed not to divulge</p> <p>15 any discussions with counsel. You've been</p> <p>16 designated, but don't divulge the content of any</p> <p>17 conversations when counsel for Rose Acre was</p> <p>18 present, but you've been designated to say that.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. Let me ask you this. You got an</p> <p>21 instruction from counsel. Let me ask you a</p> <p>22 question. What did you do to prepare yourself</p>
<p style="text-align: right;">700</p> <p>1 Q. It states, the UEP's Marketing</p> <p>2 Committee met via conference call on</p> <p>3 November 22nd and made the following</p> <p>4 recommendation to all UEP members and animal</p> <p>5 care certified companies. It is recommended</p> <p>6 that all animal husbandry certified companies</p> <p>7 only purchase eggs from other certified</p> <p>8 companies for their marketing of shell eggs. Do</p> <p>9 you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And that would be consistent with</p> <p>12 what was reflected in Exhibit 563 that we just</p> <p>13 read; is that correct, sir?</p> <p>14 MR. MONICA: Objection.</p> <p>15 THE WITNESS: It's stating the</p> <p>16 same thing, yes.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. This would have been disseminated,</p> <p>19 United Voices, to all UEP members?</p> <p>20 MR. MONICA: Objection.</p> <p>21 THE WITNESS: I don't know that</p> <p>22 for a fact. I mean, I received it.</p>	<p style="text-align: right;">702</p> <p>1 for topic 32?</p> <p>2 A. It would just be my knowledge.</p> <p>3 Q. And do you have any knowledge</p> <p>4 concerning the legality of any of the activities</p> <p>5 we've been talking about today?</p> <p>6 MR. MONICA: Caution the witness,</p> <p>7 you can answer that, but if your only knowledge</p> <p>8 comes from conversations with counsel, instruct</p> <p>9 you not to provide that information.</p> <p>10 THE WITNESS: Okay. Then I --</p> <p>11 MS. REDDING: Also, what time</p> <p>12 period are you talking about?</p> <p>13 BY MR. STUEVE:</p> <p>14 Q. Go ahead and answer my question.</p> <p>15 A. Could you repeat that, please?</p> <p>16 (The record was read as</p> <p>17 requested.)</p> <p>18 MR. MONICA: You can answer that,</p> <p>19 subject to my prior instruction.</p> <p>20 THE WITNESS: I --</p> <p>21 BY MR. STUEVE:</p> <p>22 Q. You look confused. Let me ask it</p>

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<p style="text-align: right;">703</p> <p>1 this way.</p> <p>2 Do you have any information</p> <p>3 concerning the legality of the conduct that I've</p> <p>4 been asking you about the last two days,</p> <p>5 separate and apart from advice that you've</p> <p>6 gotten from Mr. Monica's firm or any other firm</p> <p>7 representing Rose Acre?</p> <p>8 MR. MONICA: Or any attorney</p> <p>9 representing Rose Acre.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. Yeah.</p> <p>12 A. No.</p> <p>13 Q. And did you talk to anyone else at</p> <p>14 Rose Acre concerning topic 32 to prepare</p> <p>15 yourself for topic 32?</p> <p>16 A. No.</p> <p>17 (Exhibit Number 593 was marked for</p> <p>18 identification.)</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. Show you what's been marked 593,</p> <p>21 and this is Bates range RAUPDATE 0013665 through</p> <p>22 66. Did you review this document in preparation</p>	<p style="text-align: right;">705</p> <p>1 plants are Wabash Valley Produce, Brown Produce</p> <p>2 Company and Ballas Egg Products, all separate</p> <p>3 corporations, none of these entities own</p> <p>4 production. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you remember reading that at</p> <p>7 the time, sir?</p> <p>8 A. I don't remember reading this.</p> <p>9 No.</p> <p>10 Q. But you don't -- sitting here</p> <p>11 today, you don't -- you can't confirm you would</p> <p>12 have received it?</p> <p>13 A. No. I told you earlier, I recall</p> <p>14 the document. I just don't remember exactly</p> <p>15 reading that.</p> <p>16 Q. I'm sorry. I said received it.</p> <p>17 You can't confirm you received this</p> <p>18 communication?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. This does not refresh your</p> <p>21 recollection after reviewing it, as far as</p> <p>22 whether or not you had any communications with</p>
<p style="text-align: right;">704</p> <p>1 for your testimony in response to topic number</p> <p>2 32?</p> <p>3 A. No.</p> <p>4 Q. If you would, at the top, it's</p> <p>5 August 6, 2007 communication from Larry Seger to</p> <p>6 you and Aaron -- how do you pronounce his name</p> <p>7 again?</p> <p>8 A. Heironimus.</p> <p>9 Q. Heironimus. Both of you were from</p> <p>10 Rose Acre; right?</p> <p>11 A. Correct.</p> <p>12 Q. And then copied on there are</p> <p>13 several other folks, including Marcus Rust; is</p> <p>14 that right?</p> <p>15 A. Yes.</p> <p>16 Q. And do you recall receiving this</p> <p>17 communication?</p> <p>18 A. I vaguely remember it. Yes.</p> <p>19 Q. And what do you recall about it?</p> <p>20 A. Just -- I remember receiving it.</p> <p>21 Q. Okay. Now, in the second</p> <p>22 paragraph, it says, our three egg breaking</p>	<p style="text-align: right;">706</p> <p>1 anyone else about it after receiving it?</p> <p>2 A. No.</p> <p>3 (Exhibit Number 594 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. Show you what's been marked as</p> <p>7 Exhibit 594, and it's RAFKS 0013293 and up at</p> <p>8 the top it's an e-mail from Phyllis Blizzard to</p> <p>9 you; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Dated September 17, 2012?</p> <p>12 A. Yes.</p> <p>13 Q. It's an e-mail chain starting with</p> <p>14 Phyllis Blizzard down below; right? At the</p> <p>15 bottom half of the page is an e-mail from</p> <p>16 Phyllis Blizzard?</p> <p>17 A. Yes.</p> <p>18 Q. And then there's an e-mail from</p> <p>19 you saying, Phyllis, what can you buy for us and</p> <p>20 at what price; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And then it says, Greg, I was</p>

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<p style="text-align: right;">707</p> <p>1 wrong on the amount of purchase loads outside of</p> <p>2 USEM, I was figuring that on 100 loads instead</p> <p>3 of 200 loads. You could probably buy all of</p> <p>4 yours if we could find someone to pack them. Do</p> <p>5 you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And then it says, USEM is required</p> <p>8 to have a minimum of 50 percent packed by USEM</p> <p>9 members. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Did you have any understanding as</p> <p>12 to why that was a requirement?</p> <p>13 A. Not an understanding why it was a</p> <p>14 requirement. No.</p> <p>15 Q. Did USEM purchase eggs for Rose</p> <p>16 Acre in September of 2012 to fulfill their</p> <p>17 export commitment?</p> <p>18 A. I'm sorry, can you repeat that?</p> <p>19 MR. STUEVE: Why don't you read it</p> <p>20 back.</p> <p>21 (The record was read as</p> <p>22 requested.)</p>	<p style="text-align: right;">709</p> <p>1 A. No. That's not correct.</p> <p>2 Q. Let me rephrase it. This is an</p> <p>3 e-mail that's dated January 31, 2007; is that</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And it's from Marcus Rust</p> <p>7 to Gene Gregory?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. I'm getting tired, too.</p> <p>10 It's subject, USDA Program?</p> <p>11 A. Correct.</p> <p>12 Q. Now, were you aware at this time</p> <p>13 that Sparboe had left the UEP certified program</p> <p>14 and was attempting to develop its own verified</p> <p>15 animal welfare program?</p> <p>16 A. I was aware that Sparboe had left</p> <p>17 the program. Yes. The exact timing, I can't</p> <p>18 remember the exact timing, but, yes, I remember</p> <p>19 that.</p> <p>20 Q. And it says, Gene, after hearing</p> <p>21 Vic's comments? Who is Vic referring to?</p> <p>22 MR. MONICA: Objection.</p>
<p style="text-align: right;">708</p> <p>1 MR. MONICA: Objection. You can</p> <p>2 answer.</p> <p>3 THE WITNESS: I'm sorry. Could</p> <p>4 you read it one more time? I apologize.</p> <p>5 (The record was read as</p> <p>6 requested.)</p> <p>7 MR. MONICA: Objection.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. STUEVE:</p> <p>10 (Exhibit Number 595 was marked for</p> <p>11 identification.)</p> <p>12 Q. Show you what's been marked as</p> <p>13 Exhibit 595, and the Bates range is RAUPDATE</p> <p>14 0040047. Do you know from whose files this Rose</p> <p>15 Acre document -- the document Bates stamped Rose</p> <p>16 Acre came from.</p> <p>17 A. No. I don't.</p> <p>18 Q. It's an e-mail from Gene Gregory</p> <p>19 to Marcus Rust in January of 2007; is that</p> <p>20 right?</p> <p>21 A. No.</p> <p>22 Q. I'm sorry.</p>	<p style="text-align: right;">710</p> <p>1 THE WITNESS: If this, in fact,</p> <p>2 is -- like I said, I've never seen this e-mail</p> <p>3 before. If Marcus Rust would be referring to</p> <p>4 Vic, I would think it was Victor Rigrterink.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. It says, Gene, after hearing Vic's</p> <p>7 comments after talking to USDA, the verified</p> <p>8 process is a done deal. Our only chance in</p> <p>9 stopping is to going to be through FMI or</p> <p>10 Wal-Mart/Kroger approach. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Were you involved in an effort to</p> <p>13 reach out to FMI or Wal-Mart to get them not to</p> <p>14 use or to purchase Sparboe eggs that would be</p> <p>15 verified under the USDA process?</p> <p>16 MR. MONICA: Objection. Compound.</p> <p>17 Calls for speculation. Assumes facts not in</p> <p>18 evidence. You can answer.</p> <p>19 THE WITNESS: No. I did not.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. Were you aware of the discussion</p> <p>22 by Marcus Rust at this timeframe that the only</p>

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<p style="text-align: right;">711</p> <p>1 chance of stopping is going to be through FMI or</p> <p>2 Wal-Mart Kroger?</p> <p>3 MR. MONICA: Same objection.</p> <p>4 THE WITNESS: No. I'm not.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. Then it says, we lost business in</p> <p>7 Chicago last week for \$0.80 a dozen pricing to</p> <p>8 Sparboe. In January of 2007, who would that</p> <p>9 have been?</p> <p>10 MR. MONICA: Objection.</p> <p>11 THE WITNESS: I don't know.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Was this document reviewed with</p> <p>14 you in preparation for today's deposition?</p> <p>15 A. No. It was not.</p> <p>16 Q. If you could turn to topic 34. It</p> <p>17 says the -- you understand you have been</p> <p>18 designated to testify on behalf of Rose Acre in</p> <p>19 response to topic 34?</p> <p>20 A. Yes.</p> <p>21 Q. And what did you do to prepare</p> <p>22 yourself to respond to topic 34?</p>	<p style="text-align: right;">713</p> <p>1 extent that any of your knowledge comes from</p> <p>2 conversations with counsel, do not disclose</p> <p>3 that, but go ahead and answer the question,</p> <p>4 please.</p> <p>5 THE WITNESS: I have -- I've not</p> <p>6 done anything to prepare. I didn't know what --</p> <p>7 I didn't quite understand it and don't know what</p> <p>8 it means.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. It's fair to say you did not meet</p> <p>11 with anyone at Rose Acre in preparation of</p> <p>12 testimony with respect to topic 25; is that</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 (Exhibit Number 596 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. Let me show you what's been marked</p> <p>19 as 596, it's RAUPDATE 0071391 through 30.</p> <p>20 All right. First of all, can you</p> <p>21 tell me -- this is a Rose Acre, Inc. layer farm</p> <p>22 budget summary, fiscal 2001 to fiscal 2006. Do</p>
<p style="text-align: right;">712</p> <p>1 MR. MONICA: I'm going -- well, go</p> <p>2 ahead.</p> <p>3 THE WITNESS: There was nothing I</p> <p>4 knew that I could do to prepare. I have no</p> <p>5 knowledge of what that is referring to.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Are you aware, sir, that Rose Acre</p> <p>8 has alleged that AWG and its members violate the</p> <p>9 Kansas Restraint of Trade Act?</p> <p>10 A. No. I'm not.</p> <p>11 Q. Under topic 25, it's the principal</p> <p>12 material facts which you allege support each</p> <p>13 defense set forth in your answer. Do you see</p> <p>14 that topic?</p> <p>15 A. Yes.</p> <p>16 Q. Were you designated on behalf of</p> <p>17 Rose Acre to respond to that topic?</p> <p>18 A. Yes.</p> <p>19 Q. What did you do in preparation to</p> <p>20 testify about that topic prior to today?</p> <p>21 MR. MONICA: Mr. Hinton, before</p> <p>22 you answer that, you can answer it, but to the</p>	<p style="text-align: right;">714</p> <p>1 you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know why this was prepared?</p> <p>4 A. No.</p> <p>5 Q. Did you get a copy of it?</p> <p>6 A. No. Not that I recall.</p> <p>7 Q. Okay. Was there a time period in</p> <p>8 the 2000s in which Rose Acre was considering</p> <p>9 making an initial public offering?</p> <p>10 A. Not that I know of.</p> <p>11 Q. You weren't consulted about that?</p> <p>12 A. No.</p> <p>13 Q. Okay. Do you recall from '99 up</p> <p>14 to the present, Rose Acre contemplating the sale</p> <p>15 of its business?</p> <p>16 A. No.</p> <p>17 Q. Have you seen this document</p> <p>18 before?</p> <p>19 MR. MONICA: Objection. Asked and</p> <p>20 answered.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MR. STUEVE:</p>

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<p style="text-align: right;">715</p> <p>1 Q. Okay. If you would, over on 93, 2 it has fiscal year '98 up through fiscal year -- 3 excuse me -- '98 and then it goes to '93 -- so 4 '93 through '98, it has the average per dozen, 5 if you go down about halfway down. Do you see 6 that?</p> <p>7 A. Yes.</p> <p>8 Q. Does it appear to be the average 9 price per dozen?</p> <p>10 MR. MONICA: Objection.</p> <p>11 THE WITNESS: I don't know exactly 12 what that is without talking to somebody.</p> <p>13 BY MR. STUEVE:</p> <p>14 Q. Okay. We are done with our 15 questions, obviously reserving the right to come 16 back with respect to those topics that the 17 witness was not prepared to testify about.</p> <p>18 MR. MONICA: Well, we encourage 19 you to ask any questions you have because he was 20 prepared for all of your topics. I will take a 21 five minute break and come back with my topics 22 for you. For those on the phone if you have</p>	<p style="text-align: right;">717</p> <p>1 EXAMINATION BY COUNSEL FOR ROSE ACRE FARMS 2 BY MR. MONICA:</p> <p>3 Q. Mr. Hinton, I want to ask you a 4 few follow-up questions. I'll try to be brief. 5 I know you've been here two long days. We 6 appreciate your work and opposing counsel may 7 have some follow-up questions after that.</p> <p>8 If you will take Exhibit 517, 9 which is the Deposition Notice and look at topic 10 22I, please.</p> <p>11 A. Okay.</p> <p>12 Q. You see topic 22I is the purpose 13 of USEM exports. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. What is the purpose of USEM 16 exports from Rose Acre's perspective?</p> <p>17 A. From Rose Acre's perspective, it's 18 twofold. One, it's a way of when there's 19 surplus eggs, we don't have a market for in our 20 regular channels in the US without the 21 possibility of losing money in the breaking 22 market or drying without knowing the known costs</p>
<p style="text-align: right;">716</p> <p>1 questions after that, feel free to ask. I need 2 a five minute break.</p> <p>3 MR. STUEVE: Do you still believe 4 there's just going to be a couple, so I can get 5 to Marshall.</p> <p>6 MR. MONICA: Let's go off the 7 record.</p> <p>8 THE VIDEOGRAPHER: The time is 9 3:58 p.m. We are going off the record. 10 (A brief recess was taken.)</p> <p>11 MR. STUEVE: I want to go back on 12 the record. I don't need it videotaped.</p> <p>13 MR. MONICA: Are we going back on 14 right now?</p> <p>15 MR. STUEVE: Yes. We don't need 16 the videotape.</p> <p>17 MR. MONICA: No. We want him on.</p> <p>18 MR. STUEVE: That's fine.</p> <p>19 THE VIDEOGRAPHER: This is the 20 start of media unit number six. The time is 21 approximately 4:05 p.m. We are back on the 22 record.</p>	<p style="text-align: right;">718</p> <p>1 when those eggs are sold, it's a way to remove 2 the surplus we don't have another home for. 3 And the second would be at times 4 to help when countries are in need they have a 5 natural disaster or disease problem that it 6 helps other countries out to get them products 7 when they need it.</p> <p>8 Q. Does Rose Acre make money off its 9 USEM exports?</p> <p>10 MR. STUEVE: I object. The 11 witness testified he did no investigation, 12 didn't know one way or the other. So I object. 13 Lack of foundation.</p> <p>14 MR. MONICA: Move to strike. You 15 can answer the question, though.</p> <p>16 THE WITNESS: We have made money 17 off USEM exports, but I can't tell you -- we 18 don't track the exact numbers for any profit or 19 loss off an individual account like USEM or 20 customers that I would have record of.</p> <p>21 BY MR. MONICA:</p> <p>22 Q. Next I would like you to turn to</p>

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<p style="text-align: right;">719</p> <p>1 topic 20G in the Notice. Take a moment to read 2 that, 20G. I'm going to ask you a couple 3 questions about it. 4 A. Okay. 5 Q. Was Rose Acre aware and did it 6 ever participate in any industry or collective 7 effort to decrease supply or raise the price of 8 eggs and egg products? 9 MR. STUEVE: Hold on. I object. 10 Lacks foundation on the part of this witness. 11 THE WITNESS: Okay. Speaking for 12 Rose Acres, as I stated earlier today, we -- our 13 company policy is not to participate in flock 14 reductions or molt, early sell outs as it says 15 here, because of what I stated earlier that we 16 have our own breeder farms and hatcheries and 17 our pullet facilities, our layer facilities. 18 And we have to plan our schedules out on flocks 19 more than 18 months in advance so it would 20 disrupt our schedule too much. 21 As far as the second part asking, 22 am I aware of anyone else, I don't have any</p>	<p style="text-align: right;">721</p> <p>1 What was Rose Acre's approximate 2 number of layer hens in 2000, if you can recall? 3 A. I don't recall off the top of my 4 head. 5 Q. What was it when you started 6 working in your current position at Rose Acre? 7 MR. STUEVE: Objection. Vague as 8 to time. 9 THE WITNESS: My current position 10 as we established earlier was around 1992. The 11 number of birds in '92, I -- I don't recall the 12 exact number of birds in '92 off the top of my 13 head. 14 BY MR. MONICA: 15 Q. When you started to work for Rose 16 Acre in the 1980s, do you remember how many hens 17 they had? 18 A. Yes. I do. 19 Q. How many? 20 A. Three and a half million. 21 Q. What do they have now? 22 A. We have capacity for 24 million,</p>
<p style="text-align: right;">720</p> <p>1 direct knowledge of anyone doing that. 2 BY MR. MONICA: 3 Q. Did Rose Acre ever take part in 4 any early or coordinated molt, to Rose Acre's 5 knowledge? 6 A. No. 7 Q. Did Rose Acre ever make any 8 changes to its flock disposal or flock kill 9 programs as a result of any coordination with 10 anyone else in the industry? 11 A. No. 12 Q. Did Rose Acre ever make a change 13 to its chick placement or chick hatch program as 14 a result of any collective effort with any other 15 entity in the industry? 16 A. No. 17 Q. Did Rose Acre ever reduce its 18 layers or hens in conjunction with any other 19 entity in the egg industry? 20 A. No. 21 Q. And from 2000 to present -- let's 22 step back.</p>	<p style="text-align: right;">722</p> <p>1 just over 24. 2 Q. Has it always been Rose Acre's 3 stated and followed plan to increase the number 4 of layer hens whenever possible? 5 A. Yes. 6 Q. Is that, in fact, what's occurred 7 for your tenure at Rose Acres? 8 A. Yes. It has. 9 MR. MONICA: That's all I have. 10 MR. STUEVE: A few follow-up 11 questions, Mr. Hinton. 12 EXAMINATION BY COUNSEL FOR PLAINTIFF 13 BY MR. STUEVE: 14 Q. You testified to two purposes that 15 you claim that Rose Acre joined USEM. Do you 16 remember that testimony? 17 A. Yes. 18 Q. And we walked through document 19 after document that confirmed the purpose that 20 Larry Seger understood, as chairman of the USEM, 21 understood the purpose of the exports were. Do 22 you remember those documents?</p>

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<p style="text-align: right;">723</p> <p>1 MR. MONICA: Objection.</p> <p>2 Mischaracterizes the documents. Calls for</p> <p>3 speculation.</p> <p>4 THE WITNESS: I guess can you</p> <p>5 repeat the question?</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Do you remember the document I</p> <p>8 showed you that indicated Larry Seger, who is</p> <p>9 the chairman of USEM, as well as UEP USEM United</p> <p>10 Voices documents that indicated that the purpose</p> <p>11 of USEM export was to reduce supply and boost</p> <p>12 prices. Do you remember seeing those documents?</p> <p>13 MR. MONICA: Object to the form of</p> <p>14 the question. You can answer.</p> <p>15 THE WITNESS: I remember you</p> <p>16 showing me documents, and I remember me firmly</p> <p>17 stating I didn't agree with them.</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. Yeah. And the -- you identified</p> <p>20 -- you testified that you believe that Rose Acre</p> <p>21 may have made money, quote, unquote, from USEM</p> <p>22 exports. Do you remember that?</p>	<p style="text-align: right;">725</p> <p>1 A. I know from my knowledge on --</p> <p>2 Q. That's not my question. My</p> <p>3 question is what document would you look at?</p> <p>4 MR. MONICA: Objection.</p> <p>5 THE WITNESS: It would be a couple</p> <p>6 documents. We would look at the invoice price</p> <p>7 we sold at and we would go back and look at our</p> <p>8 cost to produce at the time that they were sold.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. Why wouldn't you look at what the</p> <p>11 market price would be if you could sell those</p> <p>12 eggs on the market?</p> <p>13 A. That has nothing to do with it.</p> <p>14 Q. Now, sir, you also said that one</p> <p>15 of the purposes was to help countries in need,</p> <p>16 is that your testimony for USEM exports?</p> <p>17 A. Yes. I did.</p> <p>18 Q. Which export are you referring to?</p> <p>19 A. The Mexico export.</p> <p>20 Q. When was that?</p> <p>21 A. 2012. And there was -- there was</p> <p>22 another one that you didn't show me.</p>
<p style="text-align: right;">724</p> <p>1 A. Yes.</p> <p>2 Q. I asked you specifically whether</p> <p>3 or not you knew whether Rose Acre had profits or</p> <p>4 losses from USEM exports and you told me you had</p> <p>5 no way of telling that. Do you remember that</p> <p>6 testimony?</p> <p>7 MR. MONICA: Objection.</p> <p>8 THE WITNESS: I remember you</p> <p>9 asking me if we had losses.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. You told me you had no way of</p> <p>12 telling me that; right?</p> <p>13 A. Without looking at the</p> <p>14 documentation; right.</p> <p>15 Q. I also asked you whether or not</p> <p>16 you had gains. Do you remember that?</p> <p>17 A. No. I don't.</p> <p>18 Q. What document would you look at to</p> <p>19 determine whether or not Rose Acre ever made</p> <p>20 money off of a USEM export?</p> <p>21 A. What document?</p> <p>22 Q. Yeah.</p>	<p style="text-align: right;">726</p> <p>1 Q. The Mexico export, though, in 2012</p> <p>2 was six years after you had joined USEM; is that</p> <p>3 correct, sir?</p> <p>4 A. Five or six. Yes.</p> <p>5 Q. Now, you testified that Rose Acre</p> <p>6 does not participate in early molts; is that</p> <p>7 correct?</p> <p>8 A. That's not what I testified to.</p> <p>9 No.</p> <p>10 Q. What did you testify to?</p> <p>11 A. Do you want to read back the</p> <p>12 question?</p> <p>13 MR. MONICA: Read it back.</p> <p>14 THE WITNESS: What did I</p> <p>15 testify -- I testified to what he asked.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. Does Rose Acre participate in</p> <p>18 early molts?</p> <p>19 A. That's not a clear question.</p> <p>20 Q. Sir, does -- did -- it's also your</p> <p>21 testimony that Rose Acre did not participate in</p> <p>22 flock disposal or flock kill programs; is that</p>

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<p style="text-align: right;">727</p> <p>1 correct?</p> <p>2 MR. MONICA: Objection. That is</p> <p>3 not his testimony.</p> <p>4 THE WITNESS: That's not what I</p> <p>5 testified to.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. You remember me walking through</p> <p>8 document after document concerning</p> <p>9 recommendations by the Marketing Committee at</p> <p>10 the time you sat on it concerning early molts</p> <p>11 and early kills. Do you recall that?</p> <p>12 MR. MONICA: Objection.</p> <p>13 THE WITNESS: I recall documents</p> <p>14 that you showed me. Yes.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. All right. And you couldn't</p> <p>17 recall those discussions. Do you remember that?</p> <p>18 MR. MONICA: Objection. Misstates</p> <p>19 his testimony.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. Do you remember that testimony?</p> <p>22 A. Repeat the question.</p>	<p style="text-align: right;">729</p> <p>1 that.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. You also testified that Rose Acre</p> <p>4 did not reduce its layers in conjunction with</p> <p>5 any other egg producer. Do you recall that</p> <p>6 testimony?</p> <p>7 A. Yes.</p> <p>8 Q. In fact, Rose Acre has been a</p> <p>9 participant in the certified program since 2002;</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. And according -- nearly 90 percent</p> <p>13 of the egg producers are participants in that</p> <p>14 certified program; correct, sir?</p> <p>15 A. It's 80 -- I think I testified I</p> <p>16 thought around 85 percent.</p> <p>17 Q. And all of those certified</p> <p>18 producers, they're audited to make sure that</p> <p>19 they increase the cage spaces required by the</p> <p>20 certified program; correct?</p> <p>21 MR. MONICA: Objection.</p> <p>22 THE WITNESS: They're audited to</p>
<p style="text-align: right;">728</p> <p>1 Q. I showed you the documents and</p> <p>2 asked you if you recalled the discussions</p> <p>3 concerning the recommended the early molts and</p> <p>4 early kills and you testified you had no</p> <p>5 recollection. Do you remember that?</p> <p>6 MR. MONICA: Objection.</p> <p>7 THE WITNESS: You asked me if I</p> <p>8 remembered being at these meetings and I said</p> <p>9 no.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. I asked you if the documents</p> <p>12 themselves refreshed your recollection and you</p> <p>13 said no, as well; correct?</p> <p>14 A. Correct.</p> <p>15 Q. Now, whether or not Rose Acre</p> <p>16 participated in those organized early kills or</p> <p>17 early molts, Rose Acre benefited from those</p> <p>18 organized early molts and early kills, did they</p> <p>19 not, sir?</p> <p>20 MR. MONICA: Objection calls for</p> <p>21 speculation. Assumes facts not in evidence.</p> <p>22 THE WITNESS: I can't agree with</p>	<p style="text-align: right;">730</p> <p>1 make sure they follow the program; correct.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. And according to Rose Acre's</p> <p>4 general counsel, as well as Marcus Rust, during</p> <p>5 the time that Rose Acres participated in the</p> <p>6 certified program, it's reduced its flock</p> <p>7 population literally by the millions. Do you</p> <p>8 recall that, sir?</p> <p>9 MR. MONICA: Objection.</p> <p>10 Mischaracterizes the document -- let me</p> <p>11 finish -- objection mischaracterizes the</p> <p>12 documents you've shown the witness as well as</p> <p>13 Mr. Rust's testimony. You can answer the</p> <p>14 question.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. Do you recall that?</p> <p>17 A. I recall testifying earlier that</p> <p>18 ever since I've worked as Rose Acres since 1980</p> <p>19 that we have continued to increase our flock</p> <p>20 size every year since I've been there.</p> <p>21 Q. I asked Mr. Rust without the cage</p> <p>22 space reduction, what would Rose Acre's flock</p>

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83 (Pages 731 to 734)

<p style="text-align: right;">731</p> <p>1 size be. And he testified it could be as high</p> <p>2 as 30 to 40 million. Do you have any reason to</p> <p>3 doubt that testimony, sir?</p> <p>4 MR. MONICA: Counsel, I object.</p> <p>5 You haven't shown him the transcript of what</p> <p>6 Mr. Rust was saying. You're just making the</p> <p>7 representation that was false. So you can</p> <p>8 answer the question as to whether you know from</p> <p>9 he's telling you what Mr. Rust said.</p> <p>10 THE WITNESS: I don't know what</p> <p>11 Mr. Rust said. I had no discussion with him on</p> <p>12 that topic.</p> <p>13 BY MR. STUEVE:</p> <p>14 Q. He's currently the chief executive</p> <p>15 officer of Rose Acre; correct, sir?</p> <p>16 A. Yes. He is.</p> <p>17 MR. STUEVE: I have no further</p> <p>18 questions.</p> <p>19 MR. MONICA: Anyone on the phone</p> <p>20 have any questions?</p> <p>21 MS. REDDING: No questions.</p> <p>22 MR. BURKE: No questions.</p>	<p style="text-align: right;">733</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I do hereby acknowledge that I have read</p> <p>4 and examined the foregoing of the transcript of</p> <p>5 my deposition and that:</p> <p>6</p> <p>7 (Check appropriate box):</p> <p>8</p> <p>9 () the same is a true, correct and</p> <p>10 complete transcription of the answers given by</p> <p>11 me to the questions therein recorded.</p> <p>12</p> <p>13 () except for the changes noted in the</p> <p>14 attached errata sheet, the same is a true,</p> <p>15 correct and complete transcription of the</p> <p>16 answers given by me to the questions therein</p> <p>17 recorded.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: center;">DATE SIGNATURE</p>
<p style="text-align: right;">732</p> <p>1 MR. MONICA: We're going to break</p> <p>2 real quick to try to get Greg Marshall in here,</p> <p>3 so Pat can finish his depo and get on the road.</p> <p>4 MR. STUEVE: Mr. Hinton, I know</p> <p>5 it's tough being in your chair. I'm just doing</p> <p>6 my job, and I appreciate your time.</p> <p>7 THE VIDEOGRAPHER: This concludes</p> <p>8 the video deposition of Mr. Greg Hinton on</p> <p>9 behalf of Rose Acre Farms, Incorporated.</p> <p>10 There's a total of two volumes, consisting of 12</p> <p>11 media units. The time is 4:21 p.m. and we're</p> <p>12 going off the record.</p> <p>13 (Reading and signature not</p> <p>14 waived.)</p> <p>15 (Whereupon, at 4:21 p.m., the</p> <p>16 deposition was concluded.)</p> <p>17 - - - - -</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">734</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, Paula G. Satkin, the officer before whom the</p> <p>3 foregoing proceedings were taken, do hereby</p> <p>4 certify that the witness whose testimony appears</p> <p>5 in the foregoing proceeding was duly sworn by</p> <p>6 me; that the testimony of said witness was taken</p> <p>7 by me in stenotype and thereafter reduced to</p> <p>8 typewriting under my direction; that said</p> <p>9 proceedings is a true record of the testimony</p> <p>10 given by said witness; that I am neither counsel</p> <p>11 for, related to, nor employed by any of the</p> <p>12 parties to the action in which these proceedings</p> <p>13 were taken; and, further, that I am not a</p> <p>14 relative or employee of any attorney or counsel</p> <p>15 employed by the parties hereto, nor financially</p> <p>16 or otherwise interested in the outcome of the</p> <p>17 action.</p> <p>18 My commission expires November 14, 2015.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: center;">PAULA G. SATKIN Notary Public in and for the District of Columbia</p>

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